

THE INDIAN CONSTITUTION

SURENDRA KISOR CHAKRABORTY, M. A.,

Member, The Royal Asiatic Society, (London),

The Numismatic Society of India and

Professor of History, Ananda Mohan

College, Mysore.

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College, Mymensingh

KAMALA BOOK DEPOT Ltd.,

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३ PREFACE.

The Indian Constitution is a subject of absorbing study, not only to students of politics but also to the general public. I have tried to give the main features of the system in as short a compass as possible. How far I have succeeded in my attempts, it is for the reading public to judge. I shall be highly thankful if the readers kindly point out mistakes and inaccuracies in the book which I shall try to correct in the next edition.

My heartfelt thanks are due to Dr. Jaineswar Ghosh, M.A, Ph.D. for his advice and suggestions and to my friends Messrs. Jnanendra Nath Choudhury, M.A. and Ajit Nath Nandi, M.A. for kindly going through portions of the MS. Lastly I am indebted to Mr. Natesan, the Editor, "Indian Review" who permitted me to utilise some of my articles published in his paper.

Mymensingh, }
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THE AUTHOR.

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The Indian Constitution.

I

INTRODUCTION.

The Basic Principles.

1. The Preamble of the Government of India Act of 1919 supplies the basic principles of the Indian Constitution and its future development. The ultimate political goal of the country is declared to be "the realisation of responsible government in British India as an integral part of the empire." The means by which it can be achieved are the "increasing association of Indians in every branch of the Indian administration" and the gradual development of self-governing institutions. The process must be a gradual and continuous one and the ultimate hopes of the people can be realised only by successive stages. The Parliament thus asserts unequivocally its constitutional power to decide upon the time and manner of each advance and claims that the whole responsibility "for the welfare and advancement of the Indian peoples" lies on itself alone. In short, the Parliament promises in some dim future to transfer this responsibility to the Indian peoples by the establishment of responsible government but during the intervening period the whole decision about the increasing association of Indians in the administration of the country and the development of self-governing institutions must lie with the English people. The Indian executive being

thus wholly responsible to the British Parliament, it was promised in the Preamble that substantial steps should be taken in transferring a part of the responsibility to the Indian peoples. So the main principles are the ultimate responsibility of the British Parliament for the welfare and advancement of the peoples of this country, the intention of gradually transferring this responsibility to the Indian peoples and of taking a substantial step in that direction immediately.

2. The duty of the executive in India is to look after the administration of the country and the material and moral advancement of the people under its charge. But it is not responsible for the proper discharge of its duties to the people of the country but to the British Parliament and through it to the British Electorate. The responsibility, therefore, mainly lies with the English people and under the present constitution of this country, this responsibility remains practically unimpaired. This principle, though constitutionally legal, has been assailed from a theoretical standpoint, and it has been claimed that it runs counter to the prevailing political principles of 'Self-determination and Nationality' which concede to every nation the right of determining the form of Government it should have and the fullest scope for its development as a Nation. Here, therefore, much depends upon the question whether India is a nation and on this point, the Preamble gives a decidedly negative answer. The declaration about the political goal is restricted to British India and the responsibility of the Parliament is not for the Indian Nation but for 'the Indian Peoples.' It is therefore clear that the country is taken to be inhabited by a number

of peoples who have not as yet coalesced into a Nation. This has been highly objected to and not without reasons. That there is some force in the statement cannot be questioned. The separatist tendencies of the different races and creeds, though much softened, have not wholly vanished from the political horizon of the country, but it would not be just to ignore altogether the consciousness of national unity which has gradually evolved in the course of the last few years. India is not merely a geographical unit; there is a substratum of common culture among the different races and creeds and a feeling of solidarity has been manifesting itself which could not have been dreamt of, a few years before. The claim of the British Parliament though perfectly legal under the present constitution has come to be looked upon as an insult to Indian Nationality and as vitally modifying the inherent right of the Indian people to shape their destinies according to their own ideals. The feeling may be more intensified in future, if the case for Parliamentary intervention is weakened by an attainment of unity among the Hindus and the Mohemādans and an eradication of the evil of untouchability which have been put in the fore-front of the Congress programme and which are practically the main drawbacks for the attainment of perfect national consciousness.

3. The Government of India Act of 1858 transferred all the territories in the possession of the East India Company to the Crown and Sec. 2. enacted that "India shall be governed by and in the name of Her Majesty." The British sovereign must act with the advice and consent of the Parliament, but it cannot be denied that the Act of 1919 introduces a

great change in the constitutional relation between England and India. Both the countries under the old law were subject to the same ruler, though in the case of India the King was bound to act according to the advice of the British Parliament, the reason being that Indians were not sufficiently advanced in political training to take charge of their own affairs. Thus England stood in the position of an adviser on behalf of a country which was ruled over by her sovereign. The new Act puts the Parliament in the position, not of a friend as previously, but of a master who declares his intentions to be wholly benevolent and who takes full responsibility upon himself. This bold declaration makes the Indians a subject people to the British Nation who will determine our political goal and the time and manner of each advance towards it. It is but a circuitous way of affirming that the status of a full representative government in India should be obtained only through imperial legislation. Within the British Empire representative institutions have been set up in 3 different ways—by imperial legislation, by colonial acts and by Letters patent under the King's Prerogative. The Parliament denies the right of the Indian people to settle their constitution and virtually puts the Royal Prerogative in abeyance and brings the whole constitutional advancement of India under her control.

4. The responsibility of the British Parliament is only a legal and formal one. She entrusts the real administration to a body of men selected not owing to their interest in or knowledge of the people, but because they have satisfied a more or less abstract standard of intelligence and

ability. The utmost solicitude is shown for the Indian Services and special provisions are made for their stability and benefit in the Parliamentary laws, and to them, with a confidence that neither experience nor general considerations could justify, the English people entrusts the millions of orientals who differ from their rulers in culture and sympathies. So there is much in the existing system that seems to lend colour to the allegation that India exists for the Services. A quotation from the Minute of Dissent by Sir Sankaran Nair gives the Indian standpoint.—“Gokhale said that unanimity in expressions of good will, various proposals of reform by individuals, general opposition to every particular proposal, indifference, if not refusal, to carry out the clear intentions and orders of the British Nation have characterised the attitude of the Civil Service. The Indian politician who has taken any part in Indian public life or who has any experience of the real government of the country, came to the conclusion that under the Indian Civil Service, who form and carry on the real government, no real progress which in present circumstances of the country is indispensable can be expected.” A well-ordered state, as pointed out by Mr. Zimmermann must stand for moral ends, as otherwise it “cannot claim the free service of the citizens.” He has also shown that citizenship “is civilised man’s appointed means for the service of mankind.” The Indians judged by this criterion are placed in a rather unenviable position, for circumstanced as they are, their sense of civic obligation may sometimes come into conflict with their sense of what is right and just and this conflict must in certain eventualities lead to moral degradation.

5. The political goal, as we have seen, has been defined by Parliament, to be the attainment of self-government, with, however, two qualifications. It must be within the British Empire and its form has been defined to be of the responsible type. Self-government without these limitations would be the Swaraj of the Nationalists. Their ideal also is self-government but they do not like to bind themselves to any set formula, their main intention being to be thoroughly unfettered in their attempt to realise the political salvation of their country. But there is no reason to think that they have the intention of severing the connection with the Empire, at least, at present. This question was thrashed out by Mr. Gandhi who stands in support of the connection, but he is not willing to bind his party to this view, in case of future eventualities, for as he puts it, if the Empire be a bar to the realisation of the political destiny of India, and the principles of equality and justice be replaced by chauvinism and jingoism, surely no self-respecting Indian would extol the British connection as the first and foremost principle of Indian constitutional development. That this question has arisen clearly shows that an influential section of the Indian people suspects the declared policy of Britain which claims to have fought the last war for justice and democracy. The Indians find themselves treated in spite of the professions as an inferior race within the Empire and this reacts upon their position in other parts of the world. It is justice that they demand and equality that they claim, in the Imperial possessions of England. Theoretical equality had been asserted by the British statesmen and the last Imperial Conference

gave a favourable decision for India. But it was not unanimously accepted and the practice that prevails in South Africa, Kenya etc. leads Indian politicians furiously to think what these professions really mean on the part of the Britishers. Without justifying England's attitude in the matter, it may, however be said that her position is very difficult. She cannot displease her white subjects, some of whom have got responsible self-government, and in these cases at least interference would be much objected to. But the coloured population, even if they recognise the honest motives of England, cannot be satisfied with their present place in the Imperial organisation of which England is the ostensible head. If India cannot attain self-respect and national consciousness within the Empire, surely it would be impossible to expect of her, love and reverence for the British connection. And it is against this contingency that the change of the Congress creed is directed. India would be glad to be a member of the British Commonwealth of Nations but only on one condition—that she should be treated in a manner befitting a self-respecting nation. But we must remember in this connection that much work remains to be done in India. The Nation cannot attain self-respect and independent outlook, if the social order stands in the way of individual initiative. Equality outside India, without enforcing it within the country, is not at all logical and is sure to fail. A Nation cannot thrive unless every individual comprising it has the fullest opportunity of developing his capabilities for the benefit not merely of himself but of his neighbours and his people.

6. England has evolved self-government of a particular

type. It is after a struggle for centuries that she has made her executive responsible to the legislature. The people have got the ultimate power in their hands and they exercise it through their representatives in the House of Commons. The Cabinet derives its power from the Parliament and must act according to its wishes. The device of making the executive an instrument in the hands of the legislature has obviated all chances of friction between the two branches of administration. England has flourished under this type of government and in other parts of the Empire as well as outside, experience has shown that smooth working of the representative institutions can be secured only under this particular form. It is but natural that England should have a liking for this type of government and should hold forth before India the same goal which she had reached after centuries of political training. The Nationlist party in India however, does not like to pronounce any definite opinion about the suitability of this form of government. They would not like to have their political goal fixed upon by others without allowing them any say in the matter ; though they show a preference for some form of democratic system. But like causes must lead to like results, and if we wish to have a stable form of government in India under the changed conditions, we must have responsibility of the executive to the representative body. It is time for the Congress party at least to have a tentative programme about their political ideals. Let it not be said of them "that they do not know what they want and won't be happy till they get it."

7. The Parliament is not satisfied merely with defining the goal but also tries to give an idea how the goal is to be

achieved. Full responsible government is to be secured to India by gradual stages only. The manner and time of each advance are absolutely at the discretion of the Parliament which promises however to be guided in its future policy about the political advancement of this country, by the amount of co-operation which it will receive and the extent of reliance which can be placed on the self-governing bodies in India. This doctrine surely breathes a spirit of distrust about the political capacity of the Indian people and about the genuineness of their intention to work out their destiny, if that is possible within the limits of the Empire.

8 Lastly we come to the solemn Parliamentary promise that substantial steps should be taken for the progressive realisation of responsible government in India. The Government of India Act of 1919 was meant to carry into practice the wishes of the Parliament. It is an attempt for the gradual development of self-governing institutions in India and the increasing association of Indians in every branch of the administration. Legislative bodies with non-official majorities have been set up in the provinces as well as at Delhi, and some of the functions of the Provincial governments have been transferred to the popular ministers who are responsible to the Legislative councils for the policy and conduct of their departments. That this change is a great advance upon the old order of things cannot be doubted, but it is debatable whether this is a "substantial" step towards responsible government. A close examination of the relation of the two halves of the executive, the financial distribution between them and the influence of the permanent executive on the popular side,

will show that, however great the advance may be, it may not appear to be a substantial step from the Indian point of view. Of the total net expenditure, Imperial and provincial, more than 65 p.c. is non-votable. On about 35 p.c. of the net expenditure the opinion of the Legislative bodies is taken and they are allowed to vote on these items, but the Governors, and the Governor General in case of imperial expenditure, have been empowered by Parliament to set at nought the wishes of the Legislative bodies. The Joint Committee recommended that this power of veto should be vigorously exercised and should not be put in abeyance at all; and this advice has been already extensively resorted to, and the considered views of the councils have received scant attention many a time and often. Less than 10 p.c. of the expenditure only has been placed at the disposal of the ministers and here only it is claimed that responsibility has been introduced in the Indian administration. But the position of the ministers is not yet quite satisfactory. In the allocation of revenue, preference is given to the reserved departments and even when new taxes are imposed, there is no assurance that the money derived from new taxation, ostensibly for their benefit, will be placed fully at their disposal. Taxation and finance being mainly placed under reserved departments, the ministers are very much handicapped. Moreover, the Governor exercises a great deal of influence over them. He is allowed by the Act to have a voice in the selection of the ministers who hold office during his pleasure. The Governor is not bound to be guided by the ministers. When he differs from them, he

may require action to be taken even against the advice of the ministers. The transferred departments are not completely under the popular control, though a beginning of some sort has been made in introducing responsibility in the provincial administration. The ministers can no doubt better their position if they are men of towering personality and are always guided by the interest of the people. They should be popular leaders and must have a strong backing in the council. It is in this way only that a constitutional convention might grow up which would place the ministers in a better position than that allowed to them by the Parliamentary Act.

9. Whatever may be our opinion about the Reformed Constitution, it must be acknowledged that the future constitutional development depends much upon the working of these representative bodies. They contain predominatingly large* elected majorities and if proper advantage is taken of this fact and party organisations are set up on a firm footing, it would be impossible to carry on the administration with an irresponsible executive. Everywhere the struggle has ended in the one way only viz, in making the executive responsible to the legislature. The present constitution is a transitional one and no sane person would take it to be the last word on the subject. In spite of the distrust of the Parliament about our political capabilities, it is for us to show how we can work up these ill-assorted institutions for the furtherance of our national cause. The first requisite is party organisations with definite political programmes. Already the Legislative Assembly is going to be organised on a party basis. The advent of the Democratic and

Nationalist parties has completely changed the attitude of the bureaucrats and they have been compelled to adopt a policy of sweet reasonableness in the debates. How they are influencing the administration is evident from the repeated defeats and reductions of grants that were effected in the last Budget. Such party organisations are much more necessary in the Provincial Councils. The political training of the masses and a national solidarity are the prime requisites of all political advance. That India is making a rapid progress is as clear as anything and there is no reason to doubt that the political aspirations of the people will be fulfilled much sooner than hoped for by many, without any violent upheaval if the instruments inspite of all their deficiencies that have been placed in our hands are properly worked. We have, however, much headway to make before national solidarity can be achieved and we have to prove to the world that we are a Nation and have to work upon the motto that "Nations are by themselves made".

THE LEGISLATURE.

II

The Preliminary Stages.

1. The East India Company was granted by its Charters the powers of making laws and ordinances whenever necessary. The Regulating Act of 1773 empowered the Governor General and Council "to make and issue rules, ordinances and regulations for the good order and civil government" of the Company's settlement at Fort William and the subordinate factories and places. But these rules and regulations in order to be valid, had to be registered and published in the Supreme Court with its assent and approbation, these however could be set aside by the King in Council. The Act of 1781 authorised the framing of regulations without reference to the Supreme Court but subject to the veto power of the King in Council. Such legislative functions were extended to the Governors and Councils of Madras and Bombay in 1807. Under this system the power of legislation was entrusted to the executive.

2. A new departure was made by the Charter Act of 1833. The legislative powers were withdrawn from Madras and Bombay and the whole legislative authority was vested in the Governor General in Council. This body was enlarged by

the addition of a 4th ordinary member who was not to belong to the service of the company and whose duty "was confined entirely to the subject of legislation ; he had no power to sit or vote except at meetings for the purpose of making laws and regulations." This Council appears to be the first germ of what has since expanded into the Indian Legislature. It was authorised to make laws "for all persons, places and courts within the Company's territories" and these had subject to disallowance by the Court of Directors the effect of Acts of Parliament. Further changes were made by the Act of 1853. The 4th or the Legislative Member was given the right to sit and vote at all meetings of the Council which was at the same time enlarged for legislative purposes. It came to include 12 members—the Governor General, the Commander-in-chief, the 4 ordinary members of the executive council, the Chief Justice, one Puisne Judge and 4 representative members from Bengal, Madras, Bombay and North-Western Provinces. The sittings were held in a building specially provided for the purpose and the proceedings were conducted in public. It however began to manifest a spirit of independence and adopted a policy of opposition to the executive. This led to the passing of the Indian Councils Act of 1861 and the reconstitution of the legislative body on a new footing. The number of the ordinary members of the executive

Act of 1853.

Councils Act
1861.

council was increased to five, the Commander-in-chief remained as before an extraordinary member. The Governor General nominated in addition not less than six or more than twelve additional members, at least one half had to be persons not in the service of the Government. The functions of this new Council were strictly limited to legislation and all laws were subject to the veto of the Governor General or he could reserve them for the assent of the Queen. "Measures relating to the public revenue or debt, foreign relations, religion, military or naval matters were not to be introduced without the Governor General's previous sanction." Legislative Councils were also established in Bombay and Madras on a similar basis. The Governor General was also directed to establish by proclamation a legislative council for Bengal and was empowered to establish similar councils in other provinces. Bengal got her Council in 1862 and subordinate legislative bodies were established in other provinces under this Act.

Council Act,
1892.

3. The Indian Councils Act of 1892 authorised an increase in the number of members of the Legislative Councils and provisions were made for the discussion of the annual financial statement and the asking of questions—thus relaxing the restrictions of the Act of 1861. The system of election was introduced tentatively—a certain number of nominations was made

on the recommendation of specified persons, bodies and associations and this gave a representative character to the nominated members. The government was not bound to accept the recommendation but never refused to do so.

Act of 1909. Under the Act of 1909 the system of election was definitely introduced. It enlarged the Councils and increased their powers, by allowing the members to move resolutions on financial matters as well as on matters of general public interest. All Parliamentary enactments relating to the government of this country were consolidated in the Govt. of India Act of 1915 and certain amendments were introduced by the Acts of 1916, and 1919.

The Imperial Council under the Act of 1909.

4. There were separate sets of regulations for every legislative council—imperial and provincial. But those framed for the Governor General's Council might be treated as typical. It was composed of the members of the Executive Council with the addition of nominated and elected members.—

I. Ex-officio—The six ordinary members of of the Governor General's Executive Council, the Commander-in-chief, the Governor General himself and the Lieutenant Governor or Chief Commissioner of the province in which the council sat.....9

II Additional Members :—

(A) Nominated -by the Governor General,

the number not to exceed 35 and of whom not more than 28 to be officials and 3 to be non-official persons to be selected from the Indian Commercial Community, the Mahomedans and the Landholders in the Punjab. ... 35

(B) Elected members to be ordinarily 25 in number, distributed as given below:—

- (i) The Provincial Legislative Councils 12.
- (ii) The Landholders. ... 6.
- (iii) The Mahomedans ... 5.
- (iv) The Chambers of Commerce. 2.

Of the additional members at least one half had to be non-officials *i.e.* the number of officials could not be more than 30. On the other hand the non-officials must not be in a majority in the council *i.e.* they should not number more than 34. So an official majority was guaranteed in the composition of the Council—the 9 ex-officio members and the 28 nominated officials formed a permanent majority in a Council of 69 members.

5. The Local Legislatures were composed of members of the Executive Councils (where these existed) and the elected and nominated members. There was, however, an essential point of difference between the Imperial and the Provincial Councils viz, in having non-official majorities in the Provinces. This non-official majority

did not always reflect the popular view, as it was composed not only of elected members but also of a substantial number of nominated members—varying in different provinces. Bengal occupied the most advantageous position looked at from the popular standpoint. The elected members represented certain special interests and classes and it was only indirectly that they might be said to represent the people of India.

6. The Government of India Act of 1919 further enlarged the Councils and everywhere the non-officials are in a majority. Moreover partial responsibility has been introduced in the provinces and the transferred subjects have been placed in the charge of the popular ministers. The Indian Legislature was divided into two Houses—the Council of State and the Legislative Assembly. They met for the first time on the 3rd. of February, 1921 ; and the members of the two Houses were sworn together. His Royal Highness the Duke of Connaught inaugurated the new Legislature on the 9th. February, after which the Houses parted company and sat in two places.

III

The Council of State.

The
Bicameral
System in
India.

1. The Bicameral System is to be found in almost all the countries with responsible governments. In India, however, it is for the first time that the second chamber—the Council of State has been introduced in the Imperial Legislature. On the result of this innovation will depend the introduction of the same system in the Provincial Legislative Councils.

Its origin.

2. The Montague-Chelmsford Report proposed to create a second chamber which was to be composed of 50 members ; not more than 25 to be officials, 4 nominated non-officials and 21 elected non-officials. It was not the purpose of the framers of the Report to institute a complete bicameral system ; they merely wanted this body to be the final legislative authority in matters regarded “essential” by the Government. The council was to take its part in ordinary legislative business but any measure certified “to be essential to the interests of peace, order and good government,” and passed by the Council of State could become law without further reference to the Legislative Assembly. The official majority—the 25 members with the Governor-General as President was sure to predominate in this body.

3. This proposal was, however, rejected by the Joint Parliamentary Committee. They objected

The council
of state.

to the composition of the proposed Council mainly for two reasons. The "official bloc" is generally the cause of great friction and discontent. Moreover the responsibility for emergency measures, in their opinion, should be taken up by the Governor-General himself after due deliberation subject to the approval of Parliament ; and not indirectly through the official majority in the council acting at his bidding. The Joint Committee recommended that the Council of State should have the status of a Second Chamber and should be constituted from the beginning as a revising body. Under Sec. 18 of the Act of 1919, the Council is to consist of 60 members of whom not more than 20 are to be officials. According to the Rules framed under the Act, 34 members are to be elected by the different constituencies and 6 non-officials to be nominated by the Government. The distribution between the different provinces and classes is as follows.—

Its Composition.

A. Nominated members.—26* (the total maximum.)

Officials—(maximum) 20

Non-officials—(maximum.) 6

*Excluding the member for Berar who is nominated on the result of election.

B. Elected Members—34.

Provinces.	General.		Non-Mahomedan	Mahomedan	European Commerce.	Sikal.	Total.	Remarks
						
Madras	4	1	.	.	5	The B & O Constituency is entitled to elect a 3rd member to the 2nd, 4th and succeeding alternate elections, Punjab, Second Mahomedan Member in every alternate election and Assam a Non-Mahomedan and a Mohomedan alternately.
Bombay and Sindh	..	.	3	2	1	.	6	
Bengal	.	..	3	2	1	.	6	
United Provinces	3	2	..	..	5	
Punjab	1	1 $\frac{1}{2}$	..	1	3 $\frac{1}{2}$	
Behar and Orissa	2 $\frac{1}{2}$	1	..	..	3 $\frac{1}{2}$	
Central Provinces	..	1	...	.	..	..	1
Burma	.	1	...	..	1	.	2
Assam	$\frac{1}{2}$	$\frac{1}{2}$	..	..	1	
Berar	...	1*	...	...	...	..	1
		3	17	10	3	1	34	

*Nominated by the Government on the result of election.

The representation of the different communities in the present Council—

	Elected	Officials	Nominated Non-officials.	Total
Hindus	15	4	2	21
Mahomedans.	10	2	2	14
Parsis.	3	...	1	4
Burmese.	1	.		1.
Sikh.	1	.		1
Europeans	4	14		18
Indian Christian.	..	..	1	1
	34	20	6	60

4 The franchise for the Council is restricted to a very small number, about 2000 in the major provinces, the total for the whole country being a little more than 17000. The qualifications of an elector are based on possession of landed property varying in different provinces according to circumstances, * payment of income tax on a sum ranging from Rs. 30000 in Bombay to Rs. 5000 in Burma, membership past or present of a legislative body—imperial or provincial, tenure

* In Bengal, the property qualification is the payment of Rs. 7500 as land revenue or Rs. 1875 as road or public work cesses in the Burdwan or Presidency Division and the payment of Rs. 5000 as land revenue or Rs. 1250 as road and public work cesses in the Dacca, Rajshahi or Chittagong Division; or an income-tax on a sum not less than Rs. 12000.

of office on a local body (e.g. non-official chairmen past and present and the vice-chairmen of the Municipalities or District Boards) or in a Co-operative Banking Society (non-official president or vice-president of any Co-operative Central Bank or Union or Provincial Co-operative Federation), membership past, or present, of the Senate or Fellowship of any University in British India and the holding of titles conferred for literary merit e.g. Mahamahopadhyaya or Shams-ul-ulama. Slight variations occur in the case of particular provinces;—in the United Provinces, the President past or Present of a Chamber of Commerce and the Provincial Darbaries in the Punjab are allowed to vote for the Council and in Bengal, the Europeans are excluded from the Non-Mahomedan Constituencies.

5. It was the ambition of the framers of the
 Its character Constitutional Report that “the Council should develop something of the experience and dignity of a body of elder statesmen” and they recommended that every attempt should be made to give it “a senatorial character and the quality usually regarded as appropriate to a revising chamber”. It was with this object in view that a varied franchise was introduced and it was intended to include not only the landlords and the plutocrats but also the intelligentsia. But the defect of the arrangement at present seems to be that the landlords are in a large majority and in the last

election, they captured by far the major number of seats. In course of time we can expect that the landlords and the plutocrats will be in a minority and the intelligentsia will secure its proper place in the constitutional machinery. The Legislative bodies—Provincial and Imperial, have been very much enlarged and every new election to these bodies will mean an addition to the number of electors for the Council of State. The increase will also go on in the case of the chairmen of the local bodies—the Municipalities, the District Boards and the Co operative Societies and the members of the Senates of the Universities in the country. So we can confidently expect that the present minority will be converted into a majority in the course of about 20 or 25 years. India cannot, however, be expected to be satisfied with this arrangement for so long a period of time. She will surely demand a radical change in the constitution of the Council of State in order to invest it with a really influential senatorial character.

The
Drawbacks. 6. The Council is not surely fit for the great task entrusted to it. It has clearly falsified the hopes of the framers of the Constitutional Report. They are not a body of elder statesmen ; some of them are surely old, but in no sense can the majority of the body be entitled to the epithet "statesmen." They are, with the exception of two or three only, who are in the forefront

of Indian political arena, rich landlords and merchants whose only claim to lead the country is the possession of wealth. The average member of the Council is nothing but a mediocre and in the case of some, they are intellectually below the point. There are members of this body who had been characterised as "friends of every country except their own."

7. A revising Chamber is a check on the popular House when it is likely to give way to a momentary fit of passion. It thus saves the nation from a sudden blunder and gives it time to think over the matter. Ultimately, however, the popular House is sure to have its way. But generally the duty of the second Chamber is to revise carefully and in leisure the Bills passed by the popular House. The fullest benefit cannot be expected from the present Council of State. It is practically a homogeneous body on the non-official side, composed mainly of landlords and can not be deemed to reflect the best mind of India. The educated classes, the merchants and the politicians have not their due share of influence in the Council and its very composition makes it a body subservient to the executive. The members are intensely conservative in temperament and are always in expectation of honours* from the

*It is interesting to note that 24 members out of 40 non-officials in the Council of State are title-holders while only 35 are title-holders in the Legislative Assembly out of 118.

executive and are also ill-fitted by their education and environment to take a bold stand on behalf of the people. The loss of the main portion of Rt. Honourable Mr. Sastri's Resolution for the modification of the law about the firing upon mobs in riots based mainly on English procedure, surely does not rebound to the credit of the Council in the eyes of the people. The Council is likely to be a stumbling block to liberal legislation and a hand-maid to the executive

8. There is, however, a very important check on the power of the Council. In case it differs from its powers. the Legislative Assembly, the question is to be decided by a joint voting of the two Houses. The popular House will then surely predominate. The total maximum number for the two Houses is 204, of which the Legislative Assembly, with its elected 104, contributes 144. Consequently, when the Legislative Assembly is really in earnest, it is likely to carry the day. Thus an impasse is averted in the Indian Legislative machinery, and this may be deemed to be an improvement on the arrangement of the British Legislature.

9. The Second Chamber came to be grafted to the Indian constitution by a sheer chance. Its establishment was not due to the deliberate recognition of the necessity for the introduction of the bicameral system in India. In the present circumstances, the Council of State seems to be a superfluous body. A Second Chamber is no doubt a

necessity in a Self-Governing country where the popular House with supreme power in its hands is likely to misuse it under the influence of passion or anger. But in India the power of the Legislative Assembly is hedged round on all sides by checks and safeguards. In financial matters five-sixths of the net expenditure is outside the purview of the Assembly and even in the case of the remaining one-sixth the Government of India is not bound to accept the decision of the Legislature. The power of certification and of veto which is meant to be real, as recommended by the Joint Committee and of passing ordinances, places the executive in a very favourable position as regards the Legislature in India. "The Government of India is not responsible to the people of this country but to the British Parliament" for the administration of this land and they are sure to scrutinise the doings of the Legislative Assembly and they have ample powers to keep the popular representatives on the straight path. It is surely unlikely that the Legislative Assembly would misuse its power while acting under so many restrictions and even if it does so, the consequence will be negligible, the executive being ever on the watch to set it aright. Thus the necessity of a Second Chamber did not convince the India politicians. It is the centre of conservatism in the country, and the Government relying too much upon its advice is likely to be out of touch with the people.

The future
development

10. With the financial powers, whatever these might amount to, vested mainly in the Legislative Assembly, it will surely become far more powerful than the Council and the last few sessions conclusively proved that the Assembly was going to make a determined effort to overshadow the other body. In course of time it is sure to be successful in its attempts and it will be the Lower House which will attract the best elements and the ablest statesmen in the country. No one with ability will surely like to be the member of a dignified debating society, which entails so much expenditure of time and money.

11. Though at present India has no need for the Council, yet a time may come, if the ultimate hopes of the people be realised, when the Second Chamber will take its proper place in the Constitution. Sooner or later India is sure to have Responsible Government in the Provinces as well as for the whole Empire. The country will be divided into a number of provinces or states, everywhere the executive being responsible to the legislature. And in this scheme, the Native states will not be allowed to stand by; the wave of Nationalism will carry everything before it, and the position of the Indian Princes will be analogous to that of the constitutional Governors in the British provinces. The Central Legislature will be concerned mainly with the imperial interests and there also the executive must ultimately

become responsible to the Legislature. The questions concerning the whole country *e. g.* tariffs, customs, defence etc. will come under the immediate control of the Imperial Legislature. Then and then only a Second Chamber will be a necessity for India. It will represent the States or Provinces while the Popular House will represent the people at large. Future India will be a federation of States and the Council is sure to occupy a prominent position over the affairs of the country like the Senate in the United States but a complete revolution must be effected in its composition and franchise before it can take its proper share in the administration of the land.

IV.

The Legislative Assembly

The
Assembly.

1. The Indian Legislative Assembly is nothing but the old Imperial Council under the Minto-Morley Reforms, changed in its composition and functions to meet the altered political necessities of the country. Only 25 members elected on highly restricted franchise were not deemed by the authors of the Constitutional Report, adequate enough to represent properly the interests and classes in the country and they also wanted to give greater voice to the people in the administration by eliminating the official majority.

Its Composition.

2. It is composed under the Rules of 144 members, of which 104 members are elected by various constituencies and 40 members are nominated by Government.

A. Nominated Members—41*

Officials—(maximum)—26

Non-officials—(maximum)—15*

The total maximum—41

* One person to be nominated as the result of an election held in Berar.

B. Elected Members—103. (excluding the Member for Berar).

Provinces.	General	Non-Mahomedan.	Mahomedan.	Sikh	European	Land-owners.	Indian Commerce.	Non-European.	Total	REMARKS
Madras	1	10	3	..	1	1	1	..	16	The Member for Berar is nominated as the result of an election So including him the total number of elected members is 104.
Bombay	..	7	4	..	2	1	2	..	16	
Bengal	..	6	6	..	3	1	1	..	17	
United Provinces	..	8	6	..	1	1	..	..	16	
Punjab	..	3	6	2	..	1	..	..	12	
Behar & Orissa.	..	8	3	..	..	1	..	..	12	
Central Provinces	..	3	1	..	..	1	..	..	5	
Assam	..	2	1	..	1	..	..	..	4	
Burma	..	..	..	..	1	..	..	3	4	
Delhi	1	..	..	..	..	..	..	..	1	
Berar	..	1	..	..	..	..	..	..	1*	
	1	48	30	2	9	7	4	3	104	

The distribution of the seats among the different communities in the last election :—

	Elected.	Officials.	Nominated Non-officials	Total
Hindus	57	4	6	67
Mahomedans	33	2	3	38
Parsis	2			2
Burmese	1			1
Sikhs	2		1	3
Europeans	9	18	2	29
Anglo-Indian			1	1
	104	24	13	141

The
Franchise.

3. The franchise varies in the different provinces. In fixing the voting qualifications an attempt was made in each province to enfranchise approximately the number of persons who bear the same proportion to the total number of electors for the Provincial Council as the elected members of the Legislative Assembly from the Province bear to the total number of elected members of that Provincial Council. In Bengal, for example, the total number of electors for the Legislative Council is 10,19,906 and the number of representatives from Bengal to the Assembly is 17. The

number of elected members to the Bengal Council is 113 and according to these figures the number of electors for the Legislative Assembly in Bengal should be approximately $\frac{1}{113}$ of 10, 19, 906 i.e. about 153000. The voting qualifications were fixed with a view to get a number approximate to it and the actual figures were found after drawing up the electoral rolls to be 184000; the result of this arrangement was that the qualifications had to be varied for the different provinces not with a view to enfranchise the same class of people but only to get a certain figure for each province and this was fixed merely on a theoretical consideration. The franchise for the general constituencies depends on the possession of certain landed property or an yearly income, the minimum being the amount assessable to income-tax and both of these varied for the different provinces, the difference being due to the systems of land tenure and their general condition e.g. where the people are comparatively prosperous the franchise is much higher. The voting qualifications for the province of Bengal are as follows—

A. General Constituencies—residence in the constituency and payment of

In Bengal. (a) a consolidated rate of not less than Rs. 60 or other taxes not less than Rs. 100 in the town of Calcutta ;

(b) municipal taxes of not less than Rs. 10 in the municipality of Howrah or Cossipore-Chitpore

and municipal or cantonment taxes of not less than Rs 5 in any other municipality or cantonment;

(c) road and public work cesses of not less than Rs. 5 ;

(d) chaukidari tax or union rate of not less than Rs. 5 ; or

(e) income-tax on an income of not less than Rs. 5000.

B. Special Constituencies—

(i) The European constituency—A person to be qualified for it must be a European with a place of residence in this constituency and pay an income-tax on a sum of Rs. 12000.

(ii) The Landholders' constituency—The qualifications are residence in the constituency and payment of land revenue of not less than Rs. 6000 or of road and public work cesses of not less than Rs. 1500 in the Burdwan or Presidency Division ; or of land revenue amounting to not less than Rs. 4000 or road and public work cesses amounting to not less than Rs. 1000 in the Dacca, Rajshahi or Chittagong Division.

(iii) The Indian Commerce Constituencies :—The members of the Bengal National Chamber of Commerce, Marwari Association and Bengal Mahajan Sabha are qualified as electors respect-

ively for the constituencies comprising the Chamber, Association or Sabha of which they are members.

and
in other
Provinces.

The franchise in the other provinces is moulded on this system but with great variations e. g. one of the qualifications for an elector in a general constituency is the payment of income-tax on a sum not less than Rs. 5000 in Bengal, the Punjab and Delhi ; Rs. 2000 in Madras, Bombay, U. P. and C. P., Rs. 3840 in Behar and Orissa and Rs. 3600 in Assam ; similar variations are found in other cases too.

The main
character-
istics.

4. The Assembly differs in many important respects from the old Imperial Council. It is far more democratic in its composition. The members come from all parts of the Empire and represent all important interests and communities in this vast country. They are generally recruited from the prosperous middle class people. Merchants, lawyers, teachers and landlords have all their representatives in this body ; the lawyers being much in prominence. The agricultural interest is represented by the big landlords and the rich agriculturists and that very imperfectly too. The franchise is so high that the peasant proprietors are practically excluded from this body and it cannot be deemed as democratic as one would wish.

5. In the new Assembly the number of members had to be increased to give all the inte-

rests and communities fair representation and proper share of influence and this has introduced a greater variety in its composition. Moreover the large non-official majority and increased opportunities for shaping the political destinies of the land, have converted the old, inert, lifeless council into a body impelled by enthusiasm and earnestness, thoroughly conscious of its power and bent on exercising it to the fullest extent for the welfare of the country. It has gained in dignity and has succeeded in creating a very good impression on the popular mind for its strong stand on behalf of the national cause.

6. The Assembly has passed through only 4 sessions and it is very difficult to pronounce any definite opinion on its working. But within this time great advance has been made on the right direction. The new experiment was much handicapped by the strong opposition of the Congress party which had embraced the non-co-operation programme and made a strong effort for boycotting the Councils. This led to a great loss to the Assembly which was deprived of some of the best and ablest political leaders of the country in its greatest need. Their ability and political acumen were lost to the new Councils and their place was filled up by persons some of whom had never any chance of being returned to the Legislative bodies and who are in no way fitted by education or political training to sit in them. Thus the Legis-

lative Assembly as a result of the Non-co-operation Movement stands as a loser on two counts—in losing some of the best political leaders of the country and in getting itself filled up partly by unfit and undesirable persons. It is only by gradual steps that this defect has been partially remedied and new leaders have arisen whose capabilities have been evolved as a result of experience. When the Assembly met for the first time, it presented a woeful picture of lack of cohesion and want of political organisation. The elected members had no common political programme, no party system and did not owe any allegiance to any common leader. The personal element had its full play and provincial rivalries stood in the way of united action. These drawbacks made it impossible for the Assembly to utilise its powers to the best advantage. The officials influenced the body far in excess of their numerical strength nor were the popular representatives fully conscious of their new powers and opportunities. The inauguration of the Democratic Party, the credit of which is due to Dr. Gour, Mr. Ginwala, Mr. Neogi and others has completely changed the tone of the Assembly. Not only has greater prominence been given to political principles as against the personal element but it has made it possible for the non-officials to act in concert on all important matters presented before the Assembly and offer a determined and some-

times decisive opposition to the government measures when these run counter to the popular wish. Sir Sivaswamy Ayer with his ultra-moderates has set up the Nationalist party which stands midway between the Democrats and the Government. It is only through strong organisation and concerted action that the Assembly can hope to derive the fullest benefit out of the Reforms of 1919.

7. Better organisation and recognition of its own powers have led to a great change in the nature of the debates in the House. The members of the old council knew very well that they had no hope against the opposition of the officials and the tone of the debate was apologetic and they generally finished their orations with earnest prayers to the government to accede to their requests. Their written speeches were gravely read in the House and were full of platitudes and high political maxims. All these but lent colour to the unreality and hollowness of the discussions. It was after all a one-sided affair and the officials in the plenitude of their power did not care for the opinion of the popular representatives. The new constitution has led to a reality and earnestness in the debates which are now conducted in a businesslike manner and in which the officials enter fully on a footing of equality ; all questions are thrashed out and debated from all points of view. A spirit of aggressive self-reliance and a

sense of responsibility can be met with in the debates and some of the members have manifested a debating capacity which does credit to experienced parliamentarians. But the great drawback under which the elected members labour is the want of political education in the electorates returning them to the Assembly. The electors are ignorant of the issues at stake and the members naturally cannot expect any support in their attempts. The party organisation in order to be effective must be based upon the support of the masses. The electors have to be educated and the party organisation has to be extended to the electorates. The influence of the elected members can triumph only when they have the country at their back and ready to help and actively support her representatives in the Assembly. An intimate connection between the electors and their representatives makes for real political advance and the utmost sympathy and co-operation between them will lead to an early attainment of the political goal, broadbased on democratic principles. The electors must know and fully understand the work of their representatives in the Legislature and hold them responsible for what they say and do on their behalf. The members also must expect and receive the moral support from their constituencies in their struggles. Mutual understanding between the electors and the elected will surely be thoroughly effective in checking the high-handed

conduct of the executive who generally take advantage of the political isolation of the Indian legislators.

8. The constitution of the present Assembly in spite of the great advance is not fully satisfactory. The Political Programme. and its powers are hedged round by many restrictions. Yet within this short time it has evolved an individuality of its own and is trying to impress certain principles about finance, commerce and defence on the Indian government and it has done its utmost to bring about a change in the angle of vision on all matters pertaining to India, her material, moral and political advancement.

9 The Assembly has manifested a spirit of independence and is highly jealous of its rights and prerogatives. It chafes under the restrictions imposed on it by the Parliamentary Acts and is not satisfied with an irremovable executive which is not responsible to the Indian people but professes to act under the guidance of an authority 6000 miles away. This led to the moving of the Resolution for a further advance towards responsible government at an early date. The same spirit actuates the Assembly in its attitude towards the Council of State and the executive branch of the government. The members refused to acknowledge the superiority of the Council of State and demanded equality of status and claimed equal allowances and the title of "Honourable"

with the members of the Council. They also wanted exclusive financial control and contested the right of the Council to have any voice in the Budget or the Money Bills. The question was cleverly shelved and no finality was reached but a convention is already in the making, transferring practically the whole financial control to the Assembly. In money bills the Council has equal right with the Assembly but during the last two years it was only on one occasion that the Council introduced any important amendment—the reduction of the proposed postal rate in the Budget for 1921—22.

10. The officials have not the same smooth-sailing as in the old Council. Any show of superiority, intolerance or haughtiness is sure to lead to a crushing defeat. The House may be cajoled or left to its good sense but can never be coerced. It is ready to be guided in its deliberations by the officials but would never consent to allow them any domineering voice on the questions put before the House. This has thoroughly changed the attitude of the officials towards the popular representatives.

11. "India for the Indians" is the guiding principle and the members are determined to make their country self-contained. The claim for the Indianisation of the Services has been pushed up vigorously and though much remains to be done

in this matter at least a proper beginning has been made. A foreign or semi-foreign agency cannot be expected to enter full-heartedly in the new schemes which are meant to change the character of the present wooden and immobile system. The Indianisation of the Services is necessary not merely in the interest of the future progress, but also to satisfy the growing spirit of self-respect among the people of this land. The same principle influences the economic deliberations. The members are practically all protectionists and they ardently desire to bring about the industrial revival of the country and believe protection to be one of the most important factors in their attempt.

12. It is however on questions of defence that they feel very acutely. Military expenditure is included in the non-votable list and absorbs a very high percentage of the total net revenue. The Assembly wanted to have a decisive voice over the expenditure on military affairs, and passed a Resolution requesting the Governor-General to allow them to vote on the military expenses. Though this request has not been allowed on the ground of legal technicalities, yet they have succeeded in getting certain important principles well-defined about the military policy of the country. The Committee of the House which considered the Esher Report recommended that the Indian Army should be an independent unit and not subordi-

nate to the Chief of the Imperial Staff. It is to be maintained not for Imperial purposes but to serve the interest of India and it should be Indianised as far as possible at an early date. National defence is the first consideration of a state and it is but natural that the Assembly wants to have a real control over the military policy of the country which had been denied to it by the Parliament of England.

V.

The Legislative Councils.

1. The framers of the Constitutional Report attached a great deal of importance to the Provincial Councils, as it was here that they proposed to introduce certain amount of responsibility in the administration of the country. Their second recommendation in the Report was as follows :—

“The Provinces are the domain in which the earliest steps towards the progressive realisation of responsible Government should be taken. Some measure of responsibility should be given at once, and our aim is to give complete responsibility as soon as conditions permit. This involves at once giving the provinces the largest measure of independence, legislative, administrative and financial, of the Government of India which is compatible with the due discharge by the latter of its own responsibilities.” It is therefore natural that these Councils should demand close attention on the part of the Indian politicians. They have got a much larger percentage of non-officials than the Indian Legislature, Their Composition and Constituencies are given below :—

2. A general idea about the franchise may be gathered by taking the case of Bengal as typical. An elector in a General Constituency (Mahomadan or Non-Mahomadan) must have paid one of the following taxes with the minimum noted against them :—

(a) Municipal tax of Rs. 1/8 as. (in Howrah and Cossipore-Chitpur Rs. 3) ;

(b) Road and public work cesses of Re. 1 ;

(c) Choukidari tax of Rs. 2, or

(d) income tax on an income of Rs. 2000 ;

Or

must be a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular forces. The qualifications for Calcutta constituencies are much higher.

In the Landholders' Constituencies the amount of land revenue or public works cesses paid by the Zaminders in the Presidency and Burdwan Divisions must not be less than Rs. 4500 and Rs. 1125 respectively per annum and in the case of Dacca, Rajshahy and Chittagong Divisions must not be less than Rs. 3000 & Rs. 750 respectively per year. An elector for the Calcutta University Constituency must have a place of residence in Bengal and should be a member of the Senate, an Honorary Fellow or

a graduate of the University of not less than 7 years' standing. The members representing the commercial and industrial interests are distributed among the different associations connected with trade and commerce or agriculture.—

(a) Bengal Chamber of Commerce	... 6
(b) Indian Jute Mills Association	... 2
(c) Indian Tea Association	... 1
(d) Indian Mining Association	... 1
(e) Calcutta Trades Association	... 1
(f) Bengal National Chamber of Commerce*	... 2
(g) Bengal Marwari Association	... 1
(h) Bengal Mahajan Sabha	... 1

15

The electors for these constituencies must have a place of residence in India and should be the members of these associations.

Their characteristics.

3. The first important characteristic of these bodies is a thorough want of organisation. The councils pursue a vacillating policy and it is only by fits and starts that they try to assert themselves. This must appear to be strange when we compare their composition with that of the Legislative Assembly. It is due partly to the unsatisfactory result of the last election. The Councils are composed mainly of persons without much knowledge of political affairs. Many of the members are

not equipped with sufficient education to understand properly the importance and bearing of the different subjects placed before them. It is surely very difficult for them to come to any decision on matters which they but very imperfectly understand, nor do they appreciate the value of and the necessity for a strong organisation on the part of the non-officials.

4. The ministers have a great deal of influence and a personal following in these bodies. The majority of the better type of members belong not only to the same political school but had worked side by side with the ministers as their leaders before their advent to the councils. It is but natural that these members should be disinclined to adopt a policy of permanent antagonism to that of the ministers, even when they are compelled under the constitution to side with the permanent executive against the popular will. The ministers enjoy many peculiar advantages—they are members of the Government and leaders of an important and vocal section in the councils. They are thus best fitted to bring about compromises; the members also do not like to disregard their advice and to go to extremes, and to range themselves in permanent opposition against their erstwhile leaders. We must also make some allowance for the large patronage in the hands of the ministers and its indirect influence on at least some of the members who generally live in expec-

tation of favours to come from the executive. It is the indifference of the electorates that has made this state of affairs possible. But there is no reason to doubt that important changes are impending and the people will assuredly come to their own in the next election, if not earlier. Already the the councils have become restive and now and then take a strong attitude; but it is absolutely necessary that they should be consistent throughout and refuse to be browbeaten or cajoled by anybody. What is wanted from them is the sense of responsibility and a determination to prove their capacity and to do their best for the country. Where the final decision does not lie with the councils, it is surely impolitic to shoulder the responsibility thrust upon them and to effect compromises not from the plentitude of power but from a sense of helplessness.

5. The Bombay Council has made a good impression on the public. In Madras the Council is equally strong but is much hampered by executive interference. It is very difficult to pronounce any favourable opinion about the Bengal Council. Looked at from whatever standpoint it has exhibited weakness and vacillation. In Behar and Orissa and the Central Provinces the non-officials have got greater solidarity which should be ascribed partly at least, to higher homogeneity in the composition of these bodies.

6. Already the Councils are impatient at the smallness of the work entrusted to them. The members entered the councils with the high hopes of shaping the policy of the administration. But the scant respect with which they are treated is due to their own weakness and want of organisation. Again and again, the deliberate opinions of the Councils have been vetoed by the executive on very unconvincing grounds. For this the Councils must thank themselves. In politics, organisation and consistent policy with an eye to the interest of the country are the prime desiderata of success.

VI.

The Electoral Rules and Procedure.

The electo-
rates

1. The members are elected by the different Electorates in accordance with the procedure laid down in the Rules framed by the Governor General in Council with the approval of the Secretary of State in Council. The Electorates are divided into 3 classes—the General, Communal and Special. In the General Constituencies the same voting qualifications apply to all communities (e.g. in the Council of State, the Central Provinces and Burma constituencies; in the Assembly the Delhi constituency, or in Assam Council the Shillong constituency.) The consideration of communal representation led to the reservation of a fixed number of seats for certain important communities who are in a permanent minority—the Muhamadans, the Europeans, the Sikhs in the Punjab, the Anglo-Indians in Madras and Bengal and the Indian Christians only in Madras. When the smaller communities are not allowed communal representation they are included among the Non-Muhamadans; and the rest of the seats allotted to communal electorates after reserving a fixed number of seats for the favoured communities are grouped together under this head. The term “Non-Muhamadan” is very indefinite. It excludes not only the Muhamadans but also in some cases—the Europeans, the Sikhs,

"General"
and
"Special"

the Anglo-Indians and the Indian Christians where these communities have got a number of seats set apart for them. Sometimes it is used in the sense of General and a confusion is likely to arise as the two terms 'General' and "Non-Muhamadan" are not employed in their strict sense and are treated as interchangeable words in the Rules. For practical purposes the term "General Constituency" should exclude the idea of communal representation and the "Non-Muhamadans" should include the Hindus and the other communities who have not got seats reserved for them in the Legislative bodies. Lastly we came to the third section—the "Special" Electorates. Here we have a number of interests represented—the commercial, industrial, agricultural and educational The Associations' and Societies devoted to industry, commerce and trade, the Land-holders and the Universities are formed into special constituencies with definite seats to these bodies with different voting qualifications for each of them.

General dis-
qualifications
for members

2. Persons under 25 years of age, officials, females, men adjudged by a Court to be of unsound mind, undischarged insolvents or discharged insolvents who have not obtained certificates from the Court to the effect that their insolvency was due to misfortune and not to any misconduct on their part and those who are already members of a legislative body, are ineligible for election or nomination to a Legislative

House. The following additional disqualifications may be removed by the orders of the executive—persons who are not British subjects or who had been debarred from practising as legal practitioners, or convicted by a criminal court to transportation or imprisonment for more than 6 months unless pardoned, or convicted of an offence, under the Indian Penal Code showing moral turpitude punishable with imprisonment for more than 6 months, or found guilty of corrupt practices at elections and debarred for 5 years.

and
rs, 3. The voters are disqualified if they are females, under 21 years of age, adjudged by a competent court to be of unsound mind, not British subjects or convicted of an offence under Chapter IX.A of the Indian Penal Code punishable with imprisonment for a term exceeding 6 months or guilty of corrupt practices at elections. The disqualifications in the last 3 cases may be removed by the Governors, and the sex disqualification may be removed by a resolution of the Legislative Body concerned . and already some of the provinces have passed resolutions allowing women to participate in elections.

The Elec-
toral rolls. 4, An Electoral Roll is prepared for each constituency and it includes the names of all persons, appearing to be entitled to be registered as electors for that constituency. Any one who claims to have his name included in these lists or any person who objects to the entry of any name in

any such draft, may send a statement of any such claim or objection within a specified period, after the publication of the draft, to the Revising Officer. The decisions of the Revising Officer upon all such claims or objections are final and the Electoral Rolls with necessary additions or alterations are published for public information and are deemed to be conclusive evidence for the purpose of determining whether any person is an elector or not, and these lists generally remain in force for 3 years. We have also separate lists for the Special Constituencies—the Landholders, the Universities, the Chambers of Commerce etc. It must be marked that when the same class or community returns members to the Imperial and Provincial Councils the electoral rolls generally differ, as the qualifications of voters are not the same for all these bodies. So we have separate electoral rolls for the Council of State, the Assembly and the Provincial Councils. There are however rare exceptions *e. g.* the same electoral roll for European constituency in Bombay is applicable to the Provincial Council and the Legislative Assembly.

5. No person is allowed to vote in more than one General or Communal Constituency. But this is no bar to the exercise of an additional vote or votes in the Special Constituencies if one has the necessary qualifications. If a person has the qualifications of an elector in the several districts of Bengal, he shall exercise his vote in only one

constituency. But if he be a graduate of 7 years' standing he shall vote for the Calcutta University, as a land-lord he may have a third vote and if he be a member of the Mahajan Sabha a fourth one, and so on.

**Nomination
of
Candidates.**

6. A person may stand as a candidate for election when he has the necessary qualifications under the Rules, has been duly nominated, and has appointed himself or any other person as his election agent, on or before the date of his nomination. In case he withdraws his candidature, he is not allowed to cancel the withdrawal or to be renominated. When the number of candidates is equal to the number of vacancies, all such candidates are declared duly elected but when the vacancies fall short of the number of candidates, a poll has to be taken. The votes are given by ballot and no one is allowed to vote by proxy. In the case of general and Landholders' constituencies for the Assembly and the Provincial Councils the votes have to be exercised in person. Each elector has one vote or as many as the number of members to be returned by a Constituency. The polling officer hands over a piece of paper with the names of all the candidates duly nominated for the vacancy, or vacancies in the case of a plural constituency. The elector makes the mark of a cross against the name of the candidate to whom he gives his vote. The Polling Officers send the ballot-boxes to the Returning Officer for the cons-

**Procedure
at
Election.**

tituency who on receipt of the voting papers, examines them to see whether they have been correctly filled up; in case the instructions have not been properly complied with, he rejects such papers as invalid. The votes are counted by or under the supervision of the Returning Officer, and the candidates or their duly authorised representatives are allowed to be present at the time of counting. In case of an objection, the decision of the Returning Officer is final and after all the votes have been counted he declares the Candidate or Candidates (in plural constituencies) to whom the largest number of votes, has been given to be elected and the names of the elected candidates are published in the Official Gazette. In case of an equality of votes, the decision is arrived at by lot.

Multiple
Elections.

7. When a person is elected by two Constituencies or more, he is allowed the choice of representing any one of them, but in case he fails to make the choice within a specified time all his elections are to be considered void, and new elections must take place to fill up the vacancies.

Oath
of
Allegiance.

8. Every person who is elected or nominated to be a member of the Legislature—Imperial or Provincial, must, before taking his seat, make at a meeting of the House an Oath or Affirmation of his Allegiance to the Crown. He has to solemnly swear (or affirm) that he shall be faithful and bear true allegiance to His Majesty the King, his heirs

and successors and that he shall faithfully discharge the duty of the office, upon which he is about to enter. If he fails to make the oath or affirmation within a reasonable time the Government shall declare his election or nomination void and his seat vacant.

9. An election is declared void if any corrupt practice is committed in connection with it. Bribery, undue influence, personation, publication of false statements, or incurring expenditure or employing any person in contravention of the Rules, are deemed corrupt practices. Bribery in this connection, embraces any gift, offer or promise of any gratification by a candidate or his agent or any other person with their connivance; gratification is not restricted merely to pecuniary ones but includes all forms of entertainment and all forms of employment for reward unless authorised by election rules. Any direct or indirect interference with the right of any person to stand or not to stand or to withdraw from standing as a candidate by means of any violence, injury, restraint or fraud or any threat including that of divine displeasure or of spiritual censure, is considered to be undue influence under the law: The publication by a candidate or his agent or by any person with his connivance of any statement of fact, which is false or is known to be false, in relation to the personal character or conduct of any candidate and which statement is reasonably calculated to prejudice
- Corrupt Practices.
- Bribery.
- Undue influence.
- Publication of false statements.

Personation such candidate's election, makes the election of the returned member void. Lastly to procure or abet the giving of a vote, in the name of a voter who is not the person giving such a vote, is also deemed to be a corrupt practice. Payment for conveyance, hiring of liquor shops etc. are forbidden.

Election Agent and Expenses 10 Every candidate must appoint himself or any other person who is not disqualified under the rules, his election agent at the time of his nomination. When a vacancy occurs due to dismissal or death, another agent must be immediately appointed. The duty of the agent is to keep a strict account of all the expenses incidental to the election and a detailed return has to be submitted by the candidate himself or his election agent to the Returning Officer, within a certain period, as fixed by the Government. The maximum scale of election expenses and the number or description of persons who may be employed for payment, in connection with any election for the different constituencies, are fixed by notification in the Gazette.

Election Petition, 11. The validity of an election may be questioned by a candidate or an elector on the presentation of an election petition within 14 days of the publication of the result of election and it should contain a concise statement of the material facts on which the petitioner relies, and the corrupt practice that he alleges and the petition must be accompanied by

a deposit of Rs. 1000. The Government will then appoint 3 Commissioners whose duty it will be to investigate all the allegations and to report whether grave irregularities or corrupt practices had been committed. If so, the election is void. It is also the duty of the Commissioners to adjudge the guilt of the persons concerned.

Term of
Office.

12. The elected members hold office for the full term—5 years for the Council of State and 3 years for the other Legislative bodies, unless these are dissolved sooner by the Governor General or the Governors, as the case may be. The official members are nominated for the full term or for shorter periods as determined by the Government but the nominated non-officials except the “experts” hold office for the full term like the elected members.

Vacancy.

13 Vacancies may occur in the case of elected members, when their elections are declared void or their seats vacant; or when they are absent from India, or unable to attend to duty, or dead, or have accepted office or resigned the membership; and in such cases new elections have to be held to fill up the vacancies. The powers of the Legislative bodies may be exercised notwithstanding any vacancies in these Houses.

The First Elections under the Act of 1919.

PROVINCE.	Total number of Voters.			Total Number of Votes polled in contested Elections.		
	Provincial Council.	Legislative Assembly.	Council of State.	Provincial Council.	Legislative Assembly.	Council of State.
Madras.	1248156	260186	2290	303,558	60615	1,694
Bombay.	548293	129,294	2676	163,180	5,832	2,045
Bengal.	1019906	184266	2226	292,828	42065	1,132
United Provinces.	1,347,922	167965	2912	332990	35,848	774
Punjab.	505,361	53015	1910	130152	16226	838
Bihar and Orissa.	328,304	65,992	1666	98,829	14967	700
Central Provinces.	144737	24496	919	11,566	4699	235
Assam.	203191	19,503	301	33352	2308	176
Burma.	.....	1550	2464	.....	.....	379
Delhi.	.....	3,307	.....	.....	335	.....
Total.	53,45,870	909,874	17364	1366455	182895	7973

VII.

The Organisation and Conduct of Business.

1. The President for the Council of State is Presidents, appointed by the Governor-General from among the members of that body. But in the case of the Legislative Assembly and the Provincial Councils the Presidents may be appointed by the Governor-General and the Governors from outside the House but only for the first four years. After this period they are to be elected by the Assembly or the Councils from among the members of these bodies, though the elections require to be approved by the Governor-General or the Governors. The Deputy-Deputy Presidents who preside over the Assembly and President. the Councils in the absence of the Presidents are elected from among the members. Their elections also require the approval of the Governor-General and the Governors, as the case may be, and the elected Presidents and Deputy-Presidents go out of office, if they cease to be members of their respective Legislative bodies, which determine their salaries and can remove them from their office, though the last requires the concurrence of the Governor-General or the Governor in the case of the Assembly or Council.

2 The Presidents of the Assembly and the Chairman. Councils are empowered to nominate from among the members of the respective Houses, the panels of not more than 4. Chairmen for each body

who are to preside in the absence of the Presidents and the Deputy Presidents, in the order as fixed by the Presidents.

Powers of
the Presi-
ding Officer.

3. The President has only a casting vote in case of a tie. It is also his duty to find out whether the resolutions and communications laid down in the Standing Orders, have been satisfied in the case of the Interrogations and Resolutions, and he has the power of disallowing them without giving any specific reason. Bills when passed by the Legislature must be signed by him. All the speeches are to be addressed to the President and it is his duty to preserve order in the House; and all points of order are decided by him. No discussion is allowed on any such point, unless the President himself wishes to take the opinion of the House in the matter. The members, however, may at any time submit a point of order to the decision of the President who is also invested with all the necessary powers for the purpose of enforcing his decisions. He may call on a member to discontinue his speech if he persists in irrelevance or in tedious repetitions, and may ask a member to withdraw immediately from the House, if his conduct is in his opinion grossly disorderly; and in case of grave disorder arising in the House suspend any meeting for a time fixed by him. He may also direct the visitors and the representatives of the Press to withdraw from the House whenever he thinks fit.

The
Secretary.

4. The Secretary to a Legislative House is appointed by the head of the Government and holds office during his pleasure. He is aided in the discharge of his duties by the Assistant Secretaries and other subordinate officers and an adequate staff of clericals. His duties are various and highly important. He prepares the List of Business for each meeting and sends a copy to each member. It is his duty to keep a Journal in which all the proceedings of the House should be fairly entered and to prepare a full report of the proceedings at each of the meetings for publication as soon as practicable. His other duties are to take charge of the records, to keep a List of Business for the time being before the House, and to keep its Books. It is also a part of his duty to examine all the Bills deposited by the members, to assist the Legislature and all the Committees and to write all the letters which the House or the President or any Select Committee direct to be written.

Council
Secretaries.

5. The Governor General for the Assembly and the Governors for the Councils, are empowered by the Act to appoint Council Secretaries from among the non-official members of these bodies ; they hold office during the pleasure of the Governor-General or the Governor and their duty is to assist the members of the Executive Councils and the Ministers. They go out of office if they cease to be members of the Legislative House for

more than 6 months and their salary is determined by the House for which they had been appointed.

The Select
Committee.

6. A Select Committee is appointed by the House for helping it in legislative business. The member of the Government to whose department the Bill relates, the member who introduced the Bill and the Law member must be the members of every Select Committee. The other members are appointed by the House and the Committee is composed partly of officials and partly of non-officials, an attempt being made to have a fair representation in it of all the sections in the House. A Select Committee may hear expert evidence and representatives of special interest affected by the measure before them. The Committee has to examine the Bill, clause by clause, to revise it so as to bring it into conformity with the recommendations of the majority, and to make a Report, within the time, as directed by the House. The Report may be preliminary or final, and is to be confined to a statement of the alterations, if any, with their reasons, and a recommendation in case of a final report that the Bill be passed or be re-published with the report or be not further proceeded with. Any member of the Committee has the right of recording a minute of dissent. But it must be confined to a discussion of the matter contained in the Report, free from personal remarks and should not discuss the composition of the Committee itself.

7. Every Report with the Bill to which it relates and any Minutes of Dissent received is printed for circulation among the members and is published in the Official Gazette. All the proceedings of the Select Committees are treated as confidential and the recommendations are not to be disclosed before the publication of the Report or its presentation before the House.

The Joint
Select
Committee

8. In the Imperial Legislature a Bill may be referred to the Joint Select Committee, instead of being merely referred to the Select Committee of the originating House. When a Bill has to be passed by both the Chambers of the Indian Legislature—the Council of State and the Assembly, it is found highly convenient to refer it to a Joint Select Committee of the two Chambers. This arrangement saves much time and labour and obviates to a great extent future differences between the two Houses. When the originating House wants to have a Joint Committee, it sends a message to the other Chamber for its concurrence, and the Committee contains an equal number of members from the two Chambers. The duties and powers of a Joint Committee are exactly analogous to those of a Select Committee.

Committee
of Public
Accounts.

9. For every financial year, Committees of Public Accounts are constituted for the Assembly and the Provincial Councils. They are composed of members—two-thirds, elected by the non

officials and one-third, nominated by the Government, and the Finance Members are the Chairmen. A Public Accounts Committee deals with the audit and appropriation accounts of the executive government and it is the duty of the Committee to satisfy itself that the money voted by the House has been spent within the scope of the demand granted. It also brings to the notice of the Legislature every irregularity about a re-appropriation, or a re-appropriation from one grant to another, and all expenditure which the Finance Department wants to put before the House

Duration of Legislatures. 10. The full term for the Council of State is 5 years and the other Legislative bodies—the Assembly and the Councils only 3 years. But these may be dissolved if so desired by the Governor-General in the case of the two Chambers of the Imperial Legislature and by the Governors in the case of the Provincial Councils. The term of the Imperial Chambers may be extended by the Governor General if he thinks fit, in special circumstances. The Governors also enjoy the same power but in their case the maximum period is fixed at one year and they have also to give reasons for the extension in the official notification. After the dissolution of a House the next session must meet within 6 months or with the sanction of the Secretary of State within 9 months from the date of dissolution.

Sessions. 11. The meetings of the Legislative bodies may be held at any place and at any time as appointed by the executive heads. But in practice these are divided into two sessions—the Winter and the Autumn, and are held in the capital towns of the Imperial and Provincial Administrations. The Legislative year begins in April and ends in March of the next year. The first session of the Imperial Legislature meets at Simla generally in September and sometimes extends to October. The second—the Winter Session begins in January or February and comes to an end with the Budget Debate which takes place in the last part of the month. The length of the sessions however, depends on the amount of work in hand. The Houses are prorogued at the end of the session personally or by notification by the heads of the administrations.

The Hours of Sitting. 12. The House ordinarily meets at 10-30 in the morning and with an hour's rest for tiffin, terminates at 4 ; but the duration of the meeting depends on the amount of work set forth in the list of business. The timing may be varied by the executive head to meet the convenience of the members, as has been done in the case of Bengal. The percentage of members present in the deliberations is, on the whole, satisfactory ; though the attendance of the non-officials leaves much to be desired. The meeting is adjourned from one day to another, as fixed previously, till the session comes to a close.

Arrange-
ment of
Business.

13. At the commencement of each session the Governor General for the Indian Legislature and the Governors for the Provincial Councils set apart after consideration of the amount of work before the Houses, a number of days for the transaction of the non-official business, at all other times Government business must have precedence and is arranged in the order as directed by the executive heads. The relative precedence of non-official business is determined by ballot. The Secretary prepares a List of Business for the day and a copy is made available to every member. No business which had not been included in the List can be transacted at any meeting, unless specially authorised by the President.

Rules
of
Procedure.

14. A member willing to speak on any subject before the House must rise up and speak from his own place. He has to address the President, and if at any time the President rises, he must immediately resume his seat.

All the members have the right of speaking on any motion brought before the House. The order in which the speeches are to be delivered is, however, determined by the President. A member is to speak only once, the mover only being allowed to speak for the second time, by way of reply. He may speak again with the permission of the President by way of explanation and he has also the right of speaking on any amendment of the previous motion.

The
Closure.

15. When a motion is under discussion any member may move—"That the question be now put." The President will consider whether the motion is an abuse of the Rules or Standing Orders, or an infringement of the right of reasonable debate. In case, he decides in the affirmative, the motion will be put to the House. When it is carried by a majority, the previous motion shall be put to the vote accordingly, and the debate on it comes to a close. The closure is thus applied to bring to an early end a long, unprofitable discourse and thus saves the valuable time of the House.

The
Quorum.

16. The quorums for the Legislative Houses are fixed by the Rules. The power of making laws and of transacting other business vested in the Legislatures can be exercised only when the minimum number of members are present—the quorum for the Council of State is 15; for the Assembly 25; for Madras 30; Bombay, Bengal, United Provinces and Bihar and Orissa—25; Central Provinces 20; the Punjab 15 and Assam 12.

Votes
and
Divisions.

17. Every matter to be determined by the House is introduced in the form of a motion by a member. It is to be put to the House by the President and is decided by a majority of votes. Under the Rules of Procedure, votes may be taken by voices or by Divisions; but they are always to be taken by divisions if any member so desires.

The method of taking the votes by division is to be determined by the President; the general practice is to divide the House into 2 sections—one, to enter the “Aye” lobby and the other “No” lobby. The names of the members are taken down and counted, when they enter these rooms, by the officers engaged for the purpose.

Freedom of Debate. 18. The members of the Indian Legislatures have freedom of speech and are not liable to any proceedings in any Court by reason of their speech or vote in the House. But this right has to be exercised under certain necessary limitations. Every speech must be strictly relevant to the matter before the House and no member should refer to any matter of fact, in which a judicial decision is pending, make a personal charge against a member, make use of offensive expressions regarding the conduct of the Indian or any local Legislature, reflect on the conduct of His Majesty the King, the Governor General, Governor or any Court of Law in the exercise of its judicial functions, utter treasonable, seditious or defamatory words or use his right of speech for the purpose of wilfully and persistently obstructing the business of the House.

Language of the Legislatures. 19. The business is transacted in English. The President however may permit any member who is unacquainted with English to speak in a vernacular in the Indian Legislature. In a Provin-

cial Council a member who is not fluent in English may address the House in any recognised vernacular, provided the President may call on him to speak in any language in which he is known to be proficient.

Admission
of
Strangers.

20 Admission to the House during its sittings are regulated in accordance with the orders made by the president with the approval of the executive head. The Visitors, the Representatives of the Press and the Officials are provided with seats in the galleries set apart for them. The President however may direct, whether on the application of any member or otherwise, the withdrawal of the strangers including the Press representatives, at any time, during a meeting of the House

VIII.

The Functions and Procedure.

1. The Indian Councils Act of 1861 strictly limited the Functions of the Legislative Councils to Legislation. It expressly forbade the transaction of any business except the consideration and enactment of legislative measures and no motion was allowed, except a motion introducing a bill or having reference to a bill already introduced. The power of initiation was mainly to be exercised by the executive which framed the measures and brought them before the Councils. The official majority limited the work of the non-official members to mere criticism. Their duty was to give advice to the Government about the measures under discussion and to ensure for them the greatest possible publicity. These restrictions were however relaxed by the Indian Councils Act of 1892 which was designed to give the Indians a greater share in the Government of the country and marked a new stage in the political advancement of India. It authorised the discussion of the annual financial statement and the asking of questions under certain conditions and limitations. The growth of education led to a demand for further advance along the lines laid down by the Government under Lord Lansdowne in 1892 and the Minto-Morley Reforms were inaugurated for the satisfaction of the legitimate aspirations of the Constitutionalists. The Indian Councils Act of 1909 fur-

ther enlarged the functions of the Legislatures ; Supplementary Questions were allowed and Resolutions could be moved not only on matters, of general interest but also in financial matters, in the first and second stages of the Budget discussion. These motions were fully discussed and might be put to vote. Under the Act of 1919 the Functions were further expanded and the Legislatures have secured greater rights of deliberation (*e.g.* a motion for an adjournment for debate on a matter of immediate public interest) and have obtained a wider control over financial matters and have the right of voting grants when the Budget is presented before the House.

A. INTERROGATIVE.

2. The members had the right of interrogation under the Act of 1892 and this privilege was enlarged in 1909 by allowing them to put supplementary questions. This privilege is liable to abuse ; asking of questions is the easiest method of drawing public attention to the work of a member in a Legislative House and to notify to his constituents the attention which he devotes to public affairs. Its exercise therefore necessitates careful supervision.

3. The object of interrogation in India is to get information from the executive on a matter of public concern and this privilege requires the compliance of certain conditions as laid down in the

Limitations

about
subject
matter,

and forms
and
contents.

Rules. Questions are not allowed about the relations of the Government with the foreign states and the Native Princes and Chiefs and all matters under adjudication in a Court of Law are categorically excluded. Moreover, under the Standing Orders they are to be merely requests for information, of moderate length, and must not ask for expressions of opinion or solutions of hypothetical propositions on the part of the Government. They should not also contain arguments, inferences, ironical expressions or defamatory statements and must not refer to the private conduct or character of any person. A question also shall not bring in any name or statement not strictly necessary to make it intelligible and if it contains a statement by the member himself, he shall make himself responsible for its accuracy. When a question is put to a non-official member, it must relate to a Bill, Resolution or any other matter for which that member is responsible.

4. A notification with the text of the question has to be sent to the President ten clear days before the meeting of the House in which it is to be put ; though the time can be increased or lessened at his discretion with a due regard to the necessities of the case. The question is then included in the List of Business, if all the conditions have been fulfilled ; and the answer is given in the meeting before any other business is entered upon. No discussion however is premitted in respect o

any question or any answer given to a question but supplementary questions may be put for the purpose of further elucidating any matter of fact, regarding which a request for information had been made in the original question. It may be inconvenient or even impossible for the member in charge to answer supplementary questions at a moment's notice. He therefore may require time, and in that case the supplementary question may be brought forward at a subsequent meeting of the House in the form of a fresh question.

5. It is the duty of the President to enforce the limitations and the conditions previously set forth and an emergency power has been reserved for him. He may disallow a question without giving any reason except that it is in his opinion an abuse of the right of questioning or calculated to obstruct or prejudicially affect the procedure of the House, or that it should be put before another Legislature as being outside its cognisance.

6. The advantages of this system are various. Much information is made accessible to the members who are enabled to take a proper and intelligent view of public affairs. It is also used as a means of bringing minor grievances, though in an indirect way, to the notice of the Government, and not only serves as a safeguard against maladministration and a check upon the harsh and illegal actions of the lower officials, but is also of great

use in removing the misunderstanding between the rulers and the ruled. When properly exercised it can never fail to be beneficial to the people as well as the Government, but every question without a definite purpose in view is nothing but a deplorable misuse of privilege. It entails a great deal of unnecessary work on the part of the Officials. However it appears that the non-Officials as a rule are careful in the exercise of their right and on the whole the system works satisfactorily.

7. In this connection we should mark the distinction between the "Interrogations" in the Indian Legislative Houses and those in the Continental Legislatures which are technically known as "Interpellations." These are designed not merely to obtain information but to put the Government on the defensive and to precipitate a debate which may end in the overthrow of the ministry. The Interpellation is thus a challenge and almost invariably results in a vote of confidence or want of confidence in the ministers.

B. DELIBERATIVE.

(A)

Adjournment for purpose of Debate.

8. Any member has the right of putting in a motion for an adjournment of the business of the House, for discussing a definite matter of public interest, with the approval of the President. This privilege has to be exercised subject to certain

restrictions. Only one motion should be made in the same sitting and only one matter has to be discussed in it ; this being of recent occurrence the motion also should not revive a discussion which had already been debated in the House nor anticipate any matter which had been previously fixed for consideration on a subsequent date. Moreover a motion for adjournment shall not deal with a matter in which a Resolution cannot be moved. Lastly the Governor General or the Governor as the case may be, reserves the power of disallowance, notwithstanding the consent of the President, on the ground, that it cannot be moved without detriment to the public interest, or that it relates to a matter which does not primarily concern the administration which will be called upon to pronounce its view on the motion.

9. The member wanting to move an Adjournment has to leave with the Secretary, a written statement of the matter proposed to be discussed, before the commencement of the sitting for the day. If the president decides that the discussion is in order, he shall put it to the House whether the member has the permission to move the adjournment. In case any one objects, it is the duty of the President to determine whether the minimum number of members required by the Rules is in favour of the proposal. This minimum varies for the different Houses—15 for the Council of State : 25 for the Assembly. If the number falls

short of the minimum the leave is not granted, and when at least the minimum is secured the discussion takes place at 4 o'clock or sooner, that is, after all ordinary business had been dealt with. During this discussion the members are not allowed to speak for more than 15 minutes and it must terminate at any case at 6 o'clock. It gives the Government an opportunity of making its view public or defending its policy. The motion may be talked over, and result in an interchange of views between the different parties and Government; the maximum time limit is 2 hours. If the members however are not satisfied with mere discussion, the motion may be put—"That the House do now adjourn" This is the only motion which is in order in an Adjournment for Debate and in case it is carried by a majority, it is deemed in constitutional practice to be a vote of censure on the Government policy. This right is a very valuable one. It enables the members to discuss a matter of urgent public importance with the shortest notice, put the Government on the defensive and make their views known definitely when they disagree with the Government.

(B)

RESOLUTIONS.

10. Matters of General interest are also discussed in the House and these can be brought forward in the form of Resolutions. The only restrictions are about the three classes of subjects—

Limitations
as to
Subject
matter;

those beyond the cognisance of the Indian Legislatures, relations with the foreign and native states and matters under adjudication in a Court of Law.

Form and
Contents

Besides, a Resolution must comply with certain conditions. It must be in the form of a specific recommendation to the executive, shall be clearly and precisely expressed and raise a definite issue. It must not contain arguments, inferences, ironical expressions or defamatory statements and must not refer to the private conduct or character of any person.

Procedure,

and
Powers of
Dis-
allowance.

11. A fifteen days' notice is required, though this period can be shortened by the President with the consent of the Member of the Government to whose department the Resolution relates. The President is to decide whether a Resolution is a proper subject for discussion and also to see that the necessary conditions have been fulfilled. The heads of the administrations reserve analogous powers of disallowance over the proposed Resolutions, within the period of notice, as in the case of a motion for Adjournment for purpose of Debate.

Motion
and
Withdrawal.

12. A member in whose name a Resolution stands may withdraw it with a mere statement to that effect or move it with an introductory speech. In case of his absence, the Resolution is deemed to be withdrawn. In the Assembly, another member may be authorised and if permitted by the President may move the Resolution standing in

his name. The debate must be confined strictly to the subject of the Resolution and the speeches must not ordinarily exceed 15 minutes; only the mover and the member of the government answering him are allowed 30 minutes. Amendments to the original Resolution may be moved and the President at his discretion may divide it, if it involves several points, and put each or any point separately to the vote of the House. When accepted, a Resolution has merely the force of a recommendation and is not legally binding on the Government. A Resolution which had been discussed in the House cannot be moved within one year and when it has been disallowed or withdrawn with the leave of the House, no Resolution raising substantially the same question can be moved during the same session.

The Debate
and
the Amend-
ments.

The Result.

13. The real usefulness of the whole system consists in securing publicity and criticism. This privilege is much availed, of in drawing the attention of the Government to all matters of public interest and its exercise amply proves the solicitude of the non-official members for the welfare of all classes of the people in this vast country.

Its Utility.

C. FINANCIAL.

14. The Act of 1892 for the first time permitted the discussion of the Annual Budget in the Councils subject to the proviso that no member might propose a motion or divide the Council. One or two days were annually set apart for the

Act of 1892

Reforms of 1909. discussion of the Budget which had already been settled by the executive branch of the government. The Rules framed under the Act of 1909 provided for the discussion of the Budget before it was finally settled and allowed the members to propose Resolutions and to divide the Council upon them. The discussion generally extended over several days.

Budget. 15. The Budget Discussion under the Minto-Morley Reforms of 1909 fell into three stages—two on the Financial Statement and the third on the Budget. On the day appointed by the Governor General the Financial Statement—the preliminary estimates for the Financial year next following, with an explanatory memorandum, was presented to the council every year by the Finance Member, and a printed copy was supplied to each of the members. No discussion was permitted on that day, and the first stage commenced on a subsequent day, as fixed upon by the Governor General. The members were then at liberty to move Resolutions relating to any alteration in taxation, any new loan, or any additional grant proposed, or mentioned in the statement, or the explanatory memorandum. Each Resolution was discussed and voted upon by the Council if demanded by the mover.

First Stage.

16. The second stage commenced as soon as all the Resolutions in the first stage had been dis-

Second
stage.

posed of. The different heads or groups of heads specified in the Statement were introduced separately by the members in charge and Resolutions could be moved relating to any question covered by such heads or groups of heads. They were then discussed and if necessary put to the vote

Last stage.

17. The third stage was marked by the introduction of the Budget to the Council on or before the 24th day of March every year, by the Finance Member. He described the changes that had been made in the figures of the Financial Statement and explained why any Resolutions passed in the Council had not been accepted. A printed copy of the Budget was supplied to each member and a later date was fixed by the President for a general discussion of the Budget. The members were at liberty to make any observation in the course of the debate but they were not allowed to move any Resolution, nor was the Budget submitted to the vote of the Council. The Finance Member had the right of reply to the criticisms and the discussion was brought to a close by the President with such observations which he considered necessary. The non-official control over the Budget was almost nil. They might make suggestions but these were very rarely accepted. The debate was a spectacle of helplessness and the final stage was marked by the members pronouncing orations on their pet schemes not accepted by the Government

or raising a chorus of congratulations if they had been successful "

Reforms of
1919
&
Present
Arrang-
ment.

Non-vota-
ble Items.

18. Important changes were introduced by the Act of 1919 ; the whole procedure was altered and the Legislative bodies were given certain amount of control over the financial arrangement of the country. Every year the Budgets, Imperial and Provincial, are presented before the respective Legislatures and they include the estimated annual expenditure for the whole country and the provinces. In the Imperial Legislature, the Assembly monopolises all powers over the Budget. The Council of State can neither discuss it nor vote upon it. Certain heads of expenditure are not submitted to the vote of the Assembly nor are these open to discussion except with the permission of the Governor General. The Provincial Budgets also include certain items which are put in the non-votable list and are consequently beyond the control of the Councils.

The
Budget.

First stage
—General
Discussion.

19. The Budget is dealt with by the House in two stages—(a) a general discussion ; and (b) the voting of demands for grants. No discussion takes place on the day on which the Budget is presented to the Assembly or the Councils. On a subsequent date the house discusses the Budget as a whole or any question of principle involved in it. This goes on for a number of days as fixed upon by the head of the executive i.e. the Governor General or the Governor as the case may be ; but at this stage

no motion can be moved nor can the Budget be voted upon. The Finance Member winds up the Debate and tries to answer the criticisms levelled against his Budget

Second
stage—
voting of
grants

20 The second stage commences with the voting of grants. Ordinarily a separate demand is made in respect of the grant for each Department of the Government; the Finance Member is however allowed at his discretion to include in one demand the grants for two or more departments. Each demand contains—first, a statement of the total grant proposed, and then, a statement of the detailed estimate under each grant divided into items.

21. The Governor General allots 15 days to the Assembly and the Governors 12 days to their Councils for the discussion of all the demands put before the house ; not more than 2 days are set apart for each of the demands. When the maximum limit for the discussion of a demand is reached, the President immediately puts all the questions necessary to dispose of it, without allowing any additional time for discussion. On the last of the allotted days at 5 o'clock, the President puts every question to the House in order to dispose of all outstanding matters in connection with the demands for grants. The Government has to approach the House again for a Supplementary or Additional grant when the amount voted in the

Budget is found insufficient or a new expenditure has to be incurred in a votable item. A demand for an excess grant must be presented to the House if the amount as voted previously is exceeded. The demands for Supplementary or Excess grants are dealt with by the House exactly like the original demands.

Powers of
the Execu-
tive over
the Budget

22. In this connection it should be clearly noted that no motion for appropriation can be made except on the recommendation of the Governor General in case of the Imperial Budget and of the Governors in case of the Provincial ones. Moreover the Legislative Houses cannot increase or alter the destination of grants, though they can reduce them or omit them altogether. These rules have been mainly adopted from the English Constitutional practice. All expenditure requires the sanction of the Executive Head—the Governor General or Governor and the Legislature merely exercises a supervising power. It may reduce or omit a grant but it cannot increase the grant or allot it to a different item from that proposed in the Budget. Even this limited power of the Legislature over the Budget is restricted by the Executive. The Governor General, and the Governors in the case of the votable items *relating to the reserved departments*, are invested with the power of restoration of grants when these are reduced or altogether withheld by their Legislatures. If they declare that the demands which had been reduced or refused

Restoration
of
grants.

Emergency powers.

by the Houses are *essential to the discharge of their responsibilities*, they are empowered by the Act to set at nought the considered views of the Legislatures and to incur the expenditure as asked for by them in the Budgets. Moreover they have an emergency power and they can authorise any expenditure which they deem *necessary for the safety or tranquillity* of the territories under their administration.

23. The emergency powers cover the whole field of expenditure but these are meant to be exercised very rarely and we exclude them from ordinary calculations. We next come to the power of Restoration which is to be vigorously applied (as recommended by the Joint Committee) when the Executive differs from the Legislature. The expenditure on the transferred subjects (included in the votable list) in the Provinces is excluded from the operation of this power. So practically it is here that the Votes of the Councils are decisive. On the other matters the Assembly and the Councils may deliberate, criticise, reduce or refuse the grant but the last word always lies with the executive. The total expenditure for the whole country may be arranged in 3 classes.—

I. Non-Votable—Imperial and Provincial.

II. Votable—Imperial and Provincial,

(Reserved Departments).

III. Votable—Expenditure on the Transferred subjects (wholly Provincial). Over the 1st. item the Legislatures have no control, over the 2nd. they can deliberate and vote but the ultimate decision lies with the executive and on the 3rd. item the popular representatives have been given a decisive voice.

D. Legislative.

24 The powers of the Legislative Houses have been expressly limited by the Acts of Parliament which created them. Unless clearly authorised by Parliament the Imperial Legislature, has no power "to make any law repealing or affecting any Act of Parliament passed after 1860 and extending to British India", nor is it permitted to enact any law affecting the authority of Parliament, or any part of the unwritten laws or constitution of the United Kingdom whereon may depend in any degree the allegiance of any person to the crown, or affecting sovereignty or dominion of the crown over any part of British India. The Indian Legislature has also no power "to make any law empowering any court other than a High Court" to sentence a European British subject to death or to abolish any High Court without the previous sanction of the Secretary of State. Measures affecting the public revenues, the religious

Limitations
on Imperial
Legislation.

rites and usages of any class of His Majesty's subjects in India, the discipline and maintenance of any part of His Majesty's naval or military forces and the foreign relations cannot be introduced in the Indian Legislature without the previous sanction of the Governor General.

Lastly it is declared unlawful by Sec. 27(1) of the Act of 1919 to introduce in the Indian Legislature without previous sanction, any measure regulating any provincial subject or any part of it, unless declared by rules to be subject to legislation by the Imperial Legislature, or repealing or amending any Act of a local Legislature, any Act or Ordinance made by the Governor General.

but within these limits, and under these conditions, the Indian Legislature can make laws for all persons, courts, places and things within British India. It also exercises extra-territorial powers viz legislates for Indian subjects in any part of the world, for European British subjects and the servants of the Government of India in the Native States, and for the Indian officers and soldiers in the Army when not subject to the Army Act, and for all persons belonging to the Royal Indian Marine wherever they may be serving.

25. The powers of the Provincial Legislative Councils are strictly territorial. The local legislature of a province has the power "to make laws for the peace and good government of the

territories under its charge". But it cannot introduce or pass an Act, without the previous sanction of the Governor General, affecting the public debt of India, imperial taxation, imperial defence, foreign relations and the Central subjects. A Provincial Legislature cannot also pass or take into consideration any law without the previous sanction, regulating any provincial matter which is subject to legislation by the Indian Legislature, or affecting any power expressly reserved by the Governor General in Council. Moreover previous sanction is necessary for altering or repealing any law which had been passed before 1919 by any authority in British India other than the local Legislature and which requires the previous sanction according to the rules framed under the Act of 1915 ; nor can a Council alter or repeal any act of the Indian Legislature passed after 1919 which necessitates previous sanction under the Government of India Act of 1919. Lastly a Provincial Council is in no case allowed to make any law affecting any Act of Parliament.

26 A Bill introduced in a Provincial Council has ordinarily to pass through 5 stages before it becomes an Act. In the case of the Imperial Legislature which is composed of two Chambers the same stages have to be gone through in both the Houses ; and when they differ a special procedure has to be followed, before the Bill is finally passed into law.

Passage of
a Bill
through
Imperial
Legislature.

Motion for
Leave to
introduce.

2. Motions
after
Introduc-
tion.

27. The Bill may be introduced in either house of the Indian Legislature and the first stage is marked by the motion for leave to introduce it. A non-official member has to give a notice of one month which may be increased to two months by the Governor General, and has to submit together with the notice a copy of the Bill with a full Statement of Objects and Reasons, and the previous sanction which may be necessary under the Government of India Act. In the case of a Government measure the Governor General may order the publication of a Bill in the Gazette with the Statement of Objects and Reasons and in that case it is not necessary to move for leave to introduce the Bill, and when the Bill is afterwards introduced it is not necessary to publish it again. If any member opposes this motion, the President allows him to make a brief explanatory statement and immediately puts the question to the House without further debate. The Bill is then published in the Official Gazette for the information of the public.

28. The member in charge of the Bill then makes one of the following motions. (a) to take it into consideration either at once or at some future date, (b) to refer it to a Select Committee composed of the members named by the mover, or (c) to circulate it for the purpose of securing the views of the public about the measure before the House. At this stage only the principle of the Bill and

its general provisions are discussed ; and the members are not allowed to enter into details further than is necessary to explain its principle, or to move any amendments. But if the mover wants to have his Bill taken into consideration, any other member may move as an amendment that the Bill be referred to a Select Committee or circulated for the purpose of eliciting public opinion on it ; and if the motion for reference to the Select Committee be before the House, an amendment may be moved for circulating it for public opinion. When the last motion viz. for eliciting public opinion is carried the Bill must be later on referred to a Select Committee unless specially exempted by the President.

3. Presentation of the Report.

29. The Select Committee takes all evidence and reports within a specified period. The Report is then presented to the House by the member in charge and he may move that (a) the Bill as reported by the Select Committee be taken into consideration, (b) be recommitted to the Select Committee with or without directions, or (c) the Bill be circulated for the purpose of eliciting public opinion thereon. When the first motion, to take the Bill into consideration, is before the House, any member may move an amendment that it be recommitted to the Select Committee or recirculated for public opinion.

4. Motion to take into Consideration.

30. When the motion to take the Bill into consideration is passed, the Bill enters the fourth stage in its progress through the House. Any

member may now propose amendments to the Bill and these are arranged in the order of the clauses; and in respect of each clause, after all the amendments relating to it have been disposed of, a motion may be made "That this clause stand part of the Bill."

5. Passing
of Bills.

31. The last motion is that the Bill be passed. At this stage no amendments are allowed except those that are merely formal or consequential on an amendment passed in a previous stage. The member in charge may at any stage ask for leave to withdraw the Bill and in case the leave is granted the Bill should not be further proceeded with.

Passage
through
the other
Chamber.

32. A Bill which has been passed by the originating House, is then signed by its President and sent to the other Chamber. It then must pass through the same stages, except that it is not to be referred to the Select Committee if it had already passed through this stage in the originating House. Here it may be mentioned that a reference to a Joint Select Committee is always in order when a motion for reference to the Select Committee can be taken up by the House.

Procedure
in case of
disagree-
ment.

33. When the Bill is passed by the other House without amendment the fact is to be intimated to the originating Chamber; but in case amendments are introduced, a message is sent to the Originating Chamber asking its concurrence to these amendments. The Originating House may accept

the amendments, or refuse to entertain them altogether or may introduce further amendments in place of the amendments made by the other Chamber which may, on the return of the Bill to it, either agree to the Bill as originally passed by the originating House, accept the further amendments of that Chamber or insist on its own amendments. In the last case the originating House shall either allow the Bill to lapse or intimate the fact of disagreement to the Governor General who will in that case convene a Joint Sitting of both Chambers by notification in the Gazette.

Joint
Sitting.

34. The President of the Council of State presides over a Joint Sitting and the procedure of the Council is applicable here as far as possible. The members of the two houses present at a Joint Sitting, at first deliberate, and then vote upon the bill as it had emerged from the Originating Chamber and the amendments on which the two houses disagree. When the Bill with the amendments, if any, is affirmed by the majority of the members present in a Joint Sitting, it is deemed to have been passed by both Chambers. The two branches of the Legislature before going to a Joint Sitting may have a *conference* composed of an equal number of members from the two Houses, if they so desire, for discussing the difference of opinion which had arisen between them.

35. After a Bill had been passed by the two Chambers, it is placed before the Governor General

Assent of
Governor
General

al by the Secretary of the Council of State. When he gives his assent to it by affixing his signature the Bill is published as an Act in the Official Gazette. He may, before giving his assent to it, send the Bill back to the Chambers for reconsideration; and in that case the points referred for reconsideration shall be put before the house by the President, and these should be discussed or voted upon just like the ordinary amendments to the Bill. Lastly he has the power of veto i.e. of withholding his assent, or reserving the Bill for the signification of His Majesty's pleasure thereon. In the latter case, the Act cannot have validity until His Majesty in Council has signified his assent to the Governor General and it has been notified in the Gazette of India. The Crown has the final Power of veto and may disallow any measure passed by the Indian Legislature.

His Veto.

His power
of Certifi-
cation.

36, The Governor General has not only the veto power over a Bill which has been passed, but he can also stop its passage through the House, at any stage, by exercising his power of certification. If he certifies that a Bill, any clause, or amendment to it affects the safety or tranquillity of British India or any part of it, and directs the measure should not be proceeded with, all proceedings in the subject matter of certificate must cease; and if some progress had already been made, all further proceedings must be stopped at once.

37. The passage of a Bill through a Provincial Council is a much more simple affair. It has to go through only one House. There are no Joint Select Committees, Joint Sittings nor the complicated procedure as in the case of disagreement between the two Houses of the Imperial Legislature. There are also minor differences as regards the Rules and the Standing Orders e.g. the period of notice for a motion for leave to introduce a Bill relating to a transferred subject, is only 15 days and not one month as in the case of the Imperial Legislature and the reserved subjects in the Provincial Councils. The Governors of the Provinces have exactly analogous powers over legislation like that of the Governor General—they can veto, demand reconsideration or stop legislation by exercising their power of certification.

38. Though the non-official members have the right of initiating legislation, yet it is very difficult for them, without the requisite technical knowledge and the necessary informations which only the Government can fully command, to draft a Bill; and the work of legislation is primarily done by the Government. The non-officials rather try to stimulate the Government to action by Questions and Resolutions. Moreover, the non-officials are very eager for social legislation but it is here that the Government is most apathetic, and not without reasons. A foreign Government does not like to take sides on such issues and is

determined to be thoroughly neutral and leave the whole responsibility to the Indians themselves.

IX

THE FINANCE.

A. Relations between the Central and Provincial Governments.

Centrali-
sation.

1. Before the Regulating Act, the Provinces enjoyed certain amount of autonomy. They could declare war, make treaties, annex territories and manage their revenues. It was only by gradual steps that centralisation came to be perfected in India. The difficulties of communication and the existence of intervening territories retarded the progress, but after the mutiny the railroad and the telegraph wire put an end to the provincial isolation and brought them completely under the control of the Central Government. "The Supreme Government controlled the smallest details of every branch of the expenditure; its authority was required for the employment of every person paid with public revenue, however small his salary ; and its sanction was necessary for the grant of funds even for purely local works of improvement, for every local road, for every building however insignificant" The result of this arrangement was graphically pictured by General Strachey—"The distribution of the public incomes degenerates into something

like a scramble in which the most violent has the advantage, with very little attention to reason ; as local economy leads to no local advantage the stimulus to avoid waste is reduced to a minimum ; so, as no local growth of income leads to an increase in the local means of improvement, the interest in developing the public revenues is also brought down to the lowest level."

Financial
Devolution.

Lord Mayo

2, For the prevention of this wastefulness and to put a stop to the constant unseemly conflict between the Central Government and the Provinces a scheme of partial decentralisation was formulated by Lord Mayo. These Reforms were merely for the convenience of administration and not at all from the recognition of the principle of federation in the Government of this country. A lump sum was granted to the Provinces and with this they had to meet the expenditure on certain heads of services e.g. Police, Jail, Registration etc. The Provinces were given a free hand over the sums allotted to them, though under the supervision and control of the Central Government and were enjoined to adopt the Budget procedure like the Central Government, for the services placed under their charge.

3. The arrangement had certain grave faults. There was great inequality in these grants and burdens between the different provinces. No attempt was made to remedy these defects and it was left to time to bring about an equitable

readjustment. The Provinces had no interest for exercising economy in connection with the revenues. But Lord Mayo's object was partly achieved and greater harmony prevailed between the Central and the Provincial Governments.

Lord
Lytton
and
Ripon.

Introduc-
tion of
Divided
Heads
system.

4. The next step was taken by Lord Lytton in 1877. He transferred a number of new services to the provinces and for their administration allowed them a share in certain sources of revenue e.g. Excise, Stamps etc. The Provinces enjoyed the income from these sources but in case of surplus or deficit over or below the estimated figures it was equally shared by them with the Central Government. *Contracts* were made with the Provinces on the basis of this arrangement every five years. Lord Ripon abolished the system of fixed lump sum grant to the provinces as inaugurated by Lord Mayo and in order to meet the consequential provincial deficit made over to the provinces the revenue derived from the Civil Departmental Receipts, a share in the Land Revenue etc. The Central Government however retained the emergency power of demanding money from the Provincial Government in times of war and famine.

The
Quasi-
permanent
Settlements
of 1904,

5. The *Contract System* led to much uncertainty and wastefulness. Every 5 years a new arrangement was effected and it was impossible for the provinces to have a continuity of policy in pursuing schemes of Provincial development, and they were always in a hurry towards the end of

Made
Permanent.

the period to spend off the reserves which they had built up. In 1904 the financial settlement between the Provincial and Central Government was made quasi-permanent. It marked a change of principle. "The object was to give the local Governments a more independent position and a more substantial and enduring interest in the management of the resources than had previously been possible" "Thenceforward the revenues assigned to a province were definitely fixed, and were not subject to alteration by the Central Government save in case of extreme and general necessity or unless experience proved that the assignment made was disproportionate, to normal provincial needs". In 1912 Lord Hardinge's Government made the settlements permanent. Under this arrangement the Imperial Heads were Salt, Customs, Opium, Post, Mint, Tributes, Exchange, Railways and Military Receipts. The Receipts from Public Works and the Civil Departments were largely Provincial, while the "Divided Heads" were Land Revenue, Excise, Stamps, Forests, Income-tax, Registration and Irrigation.

Provincial
Autonomy.

6. The Act of 1919 enunciated a new principle. Too much control and supervision over the provincial affairs would be a bar to the free exercise of popular influence in these matters. It was recognised by the framers of the Constitutional Report that to make Reforms a success, much latitude should be given to the provinces and

here the popular representatives should be allowed to have certain departments under their control. The Constitutional Report started with a new standpoint. "If Provincial autonomy is to mean anything real, clearly the provinces must not be dependent on the Indian Government for the means of provincial development. Our idea is that an estimate should first be made of the scale of expenditure required for the upkeep and the development of the services which clearly appertain to the Indian sphere ; that resources with which to meet the expenditure should be secured to the Indian Government ; and that all other revenues should then be handed over to the provincial Governments, which will henceforth be held wholly responsible for the development of the provincial services." Thus the first necessity was to give entirely separate resources to the Central and Provincial Governments and to abolish the system of "Divided Heads" according to which they shared the revenues from land revenue stamps, excise, income-tax and irrigation. The report proposed to make excise, Judicial stamps and land revenue wholly provincial and General Stamps and Income-tax wholly imperial. It thus retained the old Imperial and Provincial heads and added income-tax and General Stamps to the former and land revenue, excise, irrigation and judicial stamps to the latter. The provinces were given separate sources of revenue and

Abolition
of
Divided
Heads.

with these they were to meet the expenditure on the departments handed over to them by the Imperial Government and classified as Provincial subjects. If they wanted to launch any scheme of development which they could not finance from existing revenues they could impose new taxes or borrow on their own responsibility.

Provincial
Contribu-
tions.

7. The new arrangement as proposed in the Report transferred two very heavy items, land revenue and excise, wholly to the provinces and entailed a deficit in the Imperial Budget of 13'63 crores and a surplus in the provinces of 15'64 crores on the basis of the Budget figures of 1917-18. In order to get rid of this resultant deficit the Provinces were to contribute 13'63 crores to the Imperial Treasury, the contribution from each province being 87 p.c. of the gross provincial surplus.

Meston
Committee's
Recommendations.

A Committee with Lord Meston at its head was appointed to report on the financial relations between the Imperial Government and the Provinces. The proposal in the Report for taking 87 p.c. of the provincial surplus to meet the Imperial deficit was rejected as inequitable. They transferred the General Stamps to the Provinces and fixed the standard contribution of each province on the basis of population, wealth and taxable capacity. They calculated for a deficit

of 983 lakhs to the Imperial Treasury in the year 1921-22 and allotted a percentage of this sum to each province. But the immediate application of their proposal would have led to great deficits in certain provinces and heavy surpluses in others. So they tried to reach the figures of standard contributions in the course of 7 years. They thought this arrangement the most equitable and the best means of putting a stop to the system by which one province gained at the expense of the other. The standard contribution from Bengal is 19 p.c. and from Madras 17 p.c. of the total deficit 983 lakhs. But as the result of the new arrangement Bengal had a surplus of 104 lakhs and Madras 576 lakhs. If Bengal had to contribute 19 p.c. of 983 lakhs, that is, about 185 lakhs there would be a deficit of 80 lakhs in the Provincial Budget in the first year of the Reforms. So the Meston Committee recommended that in the first year Bengal should contribute $6\frac{1}{2}$ p.c. that is, 63 lakhs and it would gradually be raised to 19 p.c. that is, about 185 lakhs. On the other hand Madras is to contribute 348 lakhs i.e. $35\frac{1}{2}$ p.c. in the first year and this will be gradually reduced to 17 p.c. in the 7th. year.

Contributions for 1921—22 (the first year).

Province.	I Contribution in lakhs.	II Per Cent to the Total Deficit	III Remarks.
Madras.	348	35 5	The sum of 983 lakhs remains constant. The Contributions from Madras, United Provinces and the Punjab are gradually to decrease and from Bengal, Bombay, Bihar and Orissa, Central Provinces and Assam are to gradually increase till they reach the Standard figures in the Seventh year, the Contribution from Burma remains constant. The figures in I are only approximate.
Bombay.	56	5 5	
Bengal.	63	6 5	
United Provinces.	240	24 5	
Punjab.	175		
Burma.	64	6 5	
Bihar & Orissa.	Nil	Nil	
Central Provinces	22	2	
Assam.	15	1 5	
	Rs.983 lakhs.	100%	

8. Every year the provinces contribute to the Imperial Revenue the sum of Rs. 983 lakhs. The Financial Devolution Rule no. 17 however allows the Imperial Government to demand with the sanction, and subject to the conditions, approved by the Secretary of State an additional contribution from a province *in cases of emergency*.

This system has been assailed from all sides. It has made the Imperial Government a pensioner of the Provinces and has led to much provincial jealousy, as it is next to impossible to devise a scheme which will be satisfactory to all. Moreover all the calculations have been falsified and for the last 4 years the Government of India is budgetting for huge deficits. The sooner the provincial contributions can be dispensed with the better for both the parties—the Central and Provincial Governments. Public opinion in the country would support the abolition, even at the expense of new taxation. This would make the Provinces self-contained in their financial affairs.

(b) *The Influence of the Legislature on Expenditure.*

9. The Revenues— Imperial and Provincial may be divided into 4 main sections :—(i) *Land Revenue* must stand by itself and it is one of the most important sources of income. We need not enter into a controversy as to whether it is a tax or an income from public domain. But it cannot be denied that the land revenue policy is of utmost

The Sources
of
revenue.

importance to the people as well as the Government, agriculture being the main source of living for the people of this country. (ii) The second source of income is the revenue from *public monopolies* like Opium and Forests. The State cultivates poppy, manufactures opium and sells it by auction. It is the owner of the Forests and manages these with the object of benefiting the public treasury. (iii) The next group includes the income from the *commercial services*—the Post Office, Telegraphs, Railways, Mint, Irrigation Works and other Public Works. (iv) Lastly we come to the income derived from Taxation. The direct taxes are the Income-tax and other Assessed Taxes and the Provincial Rates; and the chief indirect taxes are the revenues derived from Salt, Excise, Customs, Stamps and Registration i.e. those that are shifted to others by the original tax-payers.

Provincial Revenues.

10. Of the total revenues, the major portion is retained by the Imperial Government and a minor part is assigned to the Provinces. The sources of provincial revenue allocated to a Local Government are the balances with the Imperial Government standing at the credit of the province when

the Reforms Act came into operation, the receipts derived from provincial subjects, General Stamps, recoveries of loans and advances given by the local Government and of interest on them, and the payments to a province by the Governor General in Council or another province for services rendered or otherwise; and these sources may be added to by the Governor General in Council if he transfers any other source of income to the provinces. From these assets the Provinces have to pay the Contributions to the Government of India, the interest on loans and advances and the expenses of the provincial subjects. If these revenues are found insufficient a Provincial Government may increase its income by the imposition of new taxation, and certain taxes have been specially set apart for the Local Governments. These taxes may be levied by the provinces without the previous sanction of the Governor General. Borrowing may have to be resorted to for non-recurring expenditure on development schemes and the Provinces have been authorised to raise loans at the security of the provincial revenues.

11. The Imperial Government keeps in its own hands all the other sources except those transferred to the Provinces. The principal sources of Revenue are the Customs, Income-tax, Salt, Opium and the receipts from the Railways, Irrigation, Mint and Posts and Telegraphs.

A. Revenue and Expenditure of the Provincial Governments.

	Opening Balance.	Revenue.	Expenditure.	Closing Balance.
1919--20	19,6258009	60, 3461527	59,6646529	20,3073007
1920--21	20,3973008	79,9416466	79,0748368	21,17,41,106

B. Revenue and Expenditure of the Central Government.

	Revenue.	Expenditure.	Deficit.
Accounts 1920--1921.	116,7682861	1490996081	32,33,13220,
Revised Estimates 1921--1922.	1089664000	1419809000	330145000
Budget Estimates* 1922--1923.	1395844000	1423000000	27156000

N. B.--As introduced to the Assembly before the changes effected by it when voting the demands for grants.

Legislative
Influence
on
Revenue.

12. It is evident that a large portion of the public revenues in India is derived from sources which are totally under the control of the Executive—Land Revenue, Opium, Forests etc. Over these sources the Legislature has very little voice. But the taxes—the Customs, the Salt duty, the Income-tax etc.—are levied by legislative measures and their incidence may be varied or these taxes may be abolished by the Legislatures imposing them. We have surely to take into account the Veto and Certification powers of the Executive, yet the Legislature can influence the revenue policy to some extent if it so wills. The Assembly last year took a bold stand on behalf of the people and succeeded in modifying the Finance Bill and reducing new taxation by about 9 crores of Rupees.

on
Expenditure.

Non-Voted
Items

a) Impe-
rial.

13. On the Expenditure side the Legislatures have greater facilities for supervision and control. They have to vote on the demands for grants. But certain items are totally exempted from Legislative Control and are not submitted to their votes. The following heads of expenditure are not submitted to the votes of the Legislative Assembly—(i) interest and sinking fund charges on loans ; (ii) expenditure of which the amount is prescribed by or under any law (iii) salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council ; (iv) salaries of Chief Commis-

sioners and Judicial Commissioners and (v) expenditure classified by the order of the Governor General in Council as—(a) ecclesiastical, (b) political, and (c) defence. These items are not open to discussion by either Chamber in the Budget Debates unless specially permitted by the Governor General. As a matter of fact permission is accorded every year and discussion is allowed on these heads ; but they are never put to the votes of the Assembly. *

(b) Provin
cial. 14. In the Provincial Budgets the Non-voted List includes (i) the contributions payable by the Local Governments to the Governor General in Council, (ii) the interest and sinking fund, charges on loans, (iii) expenditure of which the amount is prescribed by or under any law (iv) salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council; (V) and the salaries of the Judges of the High Courts and the Advocate Generals. The rest of the expenditure is votable by the councils.

15. The Provincial Expenditure is shared by the two departments—the Reserved and the

In the Revised Estimates for 1921-22 the total expenditure of the Central Government was 142 crores and of this 32½ crores was Votable and 109½ was Non-Votable. In the Budget Estimates for 1922-23 before revision by the Assembly the Votable List included about 34 crores and 108½ was on the Non-Votable side. The Votable portion is thus less than 25 p.c. of the total.

Transferred and of these the latter *i.e.* the Transferred department gets only about one-third *i.e.* about 20 crores for all the provinces. This amount of 20 crores also includes certain non-votable items. So less than 10 p.c. of the total net expenditure is allotted to the Transferred Department which is in the charge of the ministers responsible to the representative bodies—the Provincial Councils.

16. The Governor General and the Governors have the power of Restoration over the votable items, Imperial and Provincial, except those relating to the Transferred Department in the Provinces. The votes of the Councils are decisive when the demands for grants on transferred subjects are brought before them. The Governor has no legal power to restore these demands when they are reduced or refused by the Legislative Council. He has however an emergency power to authorise expenditure for the carrying on of any department not excluding the Transferred ones but it is to be used only in exceptional cases—when there is a deadlock for some reason or other in the Provincial Administration. On ordinary occasions the Governor would not interfere with the votable portion of the expenditure pertaining to the transferred subjects. We may thus divide the net expenditure—Imperial and Provincial into 3 classes. On the first—the Non-voted, the Legislature has practically no power; even the right

of discussion may be withheld at the option of the Executive. On the Votable items, the Legislatures are called upon to pronounce their views ; only in the transferred subjects they have a decisive voice and full control.

THE PARTY SYSTEM.

The
necessity
of
Parties.

1. Single and collective ministerial responsibility is the prime desideratum of Parliamentary Governments. The ministers must share the same political views, act in concert and be responsible, singly and collectively, to the Legislature. The organisation of Parties makes this state of things possible through the "agency of party spirit, party contest and party unity." The majority in the Legislature generally appoints the ministers who are taken from the same party or a combination of party groups. They share the political views of the majority and are meant to guide their acts according to its views and are ultimately responsible to it. This "Party in power" is opposed by the minority, "the Party in Opposition" which also shares or professes to share, common political views and is always on the watch for an opportunity to convert itself to a majority in the Legislature and thus to secure control over the state by having its nominees in all responsible ministerial posts.

Their
Merits
and
Demerits.

2, "Party System is based upon the natural divergence of opinion among mankind". Some are actuated by great love and veneration for the past and look with awe and horror to the future, while some people are fond of novelty

and love to make experiments about the future possibilities and move with alacrity to receive the gifts which are in store for them, This broad division of "Conservatives" and "Liberals" permeates the whole human race and it is better that the idiosyncrasies of individuals are softened and they all fall off on the same line ; it is only by combination that they can achieve the primary and the most important object in the minds of the individuals forming the party. Moreover, in democracies party is a necessity. The government of the people can only mean the government of the majority. Party is, thus, ultimately the result of the parliamentary system and is a necessity in democratically governed countries, having real representative assemblies. The defect of the system is apparent, for the individual judgment has generally to be sacrificed for the party.

3. When the party division is based on the difference of political opinions held by the members of the nation, everything goes on well ; but a disturbing element is introduced when certain combinations of members in the assembly give prominence to certain other issues, peculiar to these groups. Such party groups are to be met with in the important continental countries, France, Germany etc. This Group System leads to great instability and consequent weakness in all the countries having the cabinet System

government *i.e.* where the ministers are responsible to the representative bodies. The majority is formed by a combination of the groups, sometimes having different opinions, pulling different ways and having no cohesion ; they only agree in one thing—in their antagonism to the party or the group of parties in power. Thus ministries are short-lived and the policies of these states constantly undergo change.

4. The party government is exposed to two grave dangers. In the United States of America the two parties, the Republicans and the Democrats have practically no distinct political programmes ; both the parties advocate almost identical measures but they are highly organised as two distinct bodies in the state and this party division, as is apparent, is highly artificial and unnatural. In the words of Mr. Leacock—"it the bisection of opinion on a paramount issue does not exist, then the consolidation of the party may become a purely mechanical affair, and the bond of union may degenerate into the cohesion created by purely artificial ties. On the other hand where such cohesion, natural or artificial, is not forthcoming, parties assume the fragmentary and unmanageable form as in the continent of Europe."

Party
in
India.

5. Party in the parliamentary sense has not yet evolved in India ; the most important factor, the complete responsibility of the Executive to the

Legislature, is not in vogue here. Only partial responsibility has been introduced about the transferred subjects in the Provinces but even there the collective responsibility of all the ministers in chalking out a uniform policy for the departments under their control, has not yet been achieved. This can only be brought about by strong party organisations with definite political ideal. The Government in Council, Imperial and Provincial is not responsible to the Legislature and even if it fails to get the support of the majority, the Executive is not bound to change its policy; resignation is out of the question. Practically it may be deemed that the Legislature is divided into two camps—the officials and the non-officials; the officials being permanently in power. The non-officials may criticise the doings of the official body but can never expect to oust them and to inaugurate their policy instead. It would not be proper to compare the non-official body to the opposition in Parliamentary Assemblies, for they can never expect to supplant the officials—the Party in Power. In the Reserved subjects in the Provinces and in matters of Imperial Administration, their function is not primarily to oppose the Government but to ventilate the grievances of the people, to co-operate with the Government in its attempts to further the interests of India and to help the administration of the country by well-reasoned criticisms of government measures. It is

only moral force that they can hope to exercise in the Indian Legislatures and this will mainly depend on their far-sighted statesmanship and ardent desire for the welfare of the country. It is also imperatively necessary that they shall be well equipped with facts and figures, as they have to oppose men well-versed in state affairs. Party affiliations cannot be strong in these circumstances and the non-officials as a body are not fully organised on a party basis. It cannot be doubted, however, that certain tendencies manifest themselves, if we study the discussions and debates in the Imperial and provincial councils. There are certain principles which engage our attention. The organisation is now extremely loose, though the popular representatives have worked out something like a political and economic programme to which they adhere and try to make the Government accede to; but it must be marked that this party programme is not thoroughly well-defined at the present stage. More attention is paid to the personal element than to party principles. This is to some extent due to weak party organisation and want of a definite party programme. This system surely gives a great deal of individual liberty to the members in the discussion of political affairs, without binding them to support their party through thick and thin. But it is also true that this is secured at the expense of the party, which cannot stand forth as a homogeneous

body and consequently loses much of its importance and power.

6. Unlike some of the Continental states, the Irreconcilables in India have no seats in the Legislative Bodies. These groups may be organised on the basis of local, racial or religious interests and they are particularistic and irreconcilable. Such bodies are subversive of the true national interests of the countries. In India the Irreconcilables exert a great deal of influence in the country but they have not yet tried to gain admission to the Legislatures. These bodies are consequently for gradual evolution and the members all belong, with a few exceptions, to the moderate progressive party in the country. The accredited representatives of the people in order to properly discharge their functions must have a high ideal before them and their action shall in no case be guided by a selfish or partisan spirit. What is really wanted of them is high ability, coupled with honesty of purpose, statesmanship of an exalted character and high ideals devoid of petty and provincial jealousies.

The racial
and
communal
issues.

7. The most important result of greater popular representation in the Councils seems to be a closer organisation of party groups, based on racial and communal issues. Perhaps the party evolution which is taking place at the present moment is being brought about almost unconsciously. But it cannot be denied that

other than mere political issues claim the allegiance of the different party groups, and certain party tendencies manifest themselves which point out that in future, party organisation must be largely based on a system of groups, owing their origin to the entrance of racial and communal questions in the political arena.

8. India is inhabited by different races and communities, and the strength of social and communal ties is greater than that afforded by combinations based on political ideals. It would be wrong to say that the organisation of party groups in India is complete. But a careful study of the division lists clearly shows that this is merely a question of time. This movement may, surely, be retarded and parties may evolve based on political issues, pure and simple, but it would require the advent of political geniuses and an amount of political education which very few nations can boast of. The case of Austria, however, must be an object lesson to us. She was inhabited by a large number of nationalities falling broadly in three great groups—the German, the Slavonic and the Latin; and the key to the politics of the Austrian Empire was afforded by the racial composition of its population. Of the twenty six party groups before the war, all except two, comprised either homogeneous racial groups or fractions of such groups. The result had been extreme instability in the working of the

political institutions, want of a definite national policy and consequent degeneration leading to political dismemberment.

The
Officials.

9. The Officials have all the characteristics of a good party. They have one and the same programme among them and follow their leader unflinchingly. The individual opinions and predilections exert no influence on the voting list, and the officials not only vote but even sometimes abstain from voting in a body. They have the greatest amount of solidarity and definiteness of purpose and the responsibility for the policy pursued rests upon the whole body of officials and not upon them individually. This system of "official bloc" came in for much adverse criticism in the Montague-Chelmsford Report as well as in the recommendations of the Joint Select Committee, but the old arrangement is going on, and only in exceptional cases have the officials been allowed to exercise their individual judgment on matters put before the Councils for decision.

The
Europeans.

10. The next group, that of the non-official Europeans, is also a highly compact body. They generally vote together and this body is almost always found on the side of the Government in opposition to the Indian non-officials.

The
Muhamadans.

11. The ties binding together the Muhamadans in a body are slightly weaker than those of the Europeans but they form a more compact body than the Hindus. They are drawn towards each

other by communal interest and rivalry with their Hindu neighbours. They devote much time and attention to the interests of their community and their votes are generally influenced by these predilections. Though they are not so highly organised as the Official and the non-official European groups, yet there is a tendency among them for concerted action and to give preponderance to side issues—the interests of the particular community to which they belong.

The
Hindus.

12. The Hindus are a heterogeneous mass and the least organised of all the groups. The reason appears to be that they command a large number of members, representing different interests and belonging to different scales in society. The points of divergence between the different sections of the Hindus, in their moods of thinking and ideals, are so great that some time will elapse before they become a more homogeneous party. But an intelligent appreciation of their work by the electorates and their countrymen at large, would compel them to give up their personal predilections and to follow a concerted and definite course of policy. Such highly objectional features, among the non-officials in general and the Hindus in particular *vis* high percentage of absence and abstention from voting, are due to weak party organisation and are sure to vanish with increased popular interest in political affairs. This abstention from voting shows either a certain amount of irresolution or subordina-

ation of public interests to personal motives due to friendly arrangements between the members or points out a lack of political training ; and proves these members, when looked from party point of view, thoroughly unworthy of their high position

13. It can very well be surmised that with greater political training among the people and larger popular representation, the party organisation will become more and more complete but it would not be entirely wrong to fear that other groups will arise, specially among the Hindus, based on class or political rivalries e.g., Landlords vs Tenants, Brahmins vs Non-Brahmins, the Plutocrats vs the Middle class, Moderates vs Extremists etc. Thus all the forces at work in India point out that questions of racial rivalries and communal conflicts are sure to have a domineering influence on politics. This is likely to confuse issues and to have a pernicious effect on party organisation. Racial groups with all sorts of political and non-political ideals are likely to rise up in the country and must lead to a certain amount of confusion and uncertainty in the working of the Legislatures. It is idle to expect that India will be able to work her political institutions in a better and more efficient way than the majority of the western states that had had a long course of political training ; and the drawbacks under which we shall have to labour are the price

to be paid for the rivalries and conflicts of the different sections of the people who have in course of ages established themselves in this country.

The Democratic Party. 14. The inauguration of the Democratic Party in the Legislative Assembly is a move in the right direction. It is based on political issues and already its activities have been crowned with partial success. The members are united in object and action and exert a great deal of influence in the Assembly. The statement issued to the Press by Mr. Seshagiri Iyer, the President of this Party as regards its programme is quoted below.—“ Our goal is Dominion self-government within the Empire. To achieve this end we aim at democratising the existing machinery of Government as rapidly as possible. Every executive Councillor to be appointed, hereafter, must be chosen from the representatives of the people in the Assembly. Such a councillor must be responsible both to the people and to the Assembly and must be liable to be replaced by an adverse vote of the Assembly.

Its Programme. Secondly, in fiscal matters, we shall have as complete an autonomy as is enjoyed by the self-Governing countries. There should be no interference whatsoever from Whitehall. This is what the Joint Committee recommended, and we shall fight for it strenuously.

Thirdly, as regards the military, we consider that the Standing Army should give way to the Citizen Army, that the present strength is unnecessary, that the Indian element in it should be very largely increased, that the British element should be considerably reduced, that the army should be mainly officered by Indians, that Sandhurst is expensive and the headquarters establishment should be greatly cut down, that the military colleges affording facilities for a complete training in India should be established. We feel that the present strength is so burdensome to the country that if it is allowed to continue, progress in every department would become impossible.

Fourthly, the services must begin to be recruited solely in India and the European element must be gradually eliminated.

Fifthly, we consider that it would be an unwarranted interference with the Government here and with the legislature, if a Commission is appointed to enquire into the grievances of the services.

Sixthly, we shall press for the grant of a political amnesty for persons already in jail, to the grant of full citizen rights to persons who have come out of the jail to enable them to enter the Councils with a view to do constructive work and shall avail ourselves of every opportunity to induce the authorities to remove the grievances of the people

which have led to the withholding of co-operation by a large section of our country-men with the existing Government

Seventhly, as there is unquestionably a considerable distrust in the country, we consider that the interests of the Government as well as of the people require that there should be a thorough examination of the causes which have led to the want of confidence. We shall insist on enquiries being conducted by a statutory commission mainly composed of representative Indians into the matter.

Eighthly, we shall endeavour to bring about a re-approachment between those who hold that the Government is so bad that it cannot be mended and the authorities who consider that a section of the people are so irreconcilable that they cannot be conciliated.

Ninthly, the voting power of the Assembly should in no way be restricted. It would comprise every subject which is within the cognizance of the Executive Government.

Lastly, we shall ask for the exercise of the powers reserved under the Devolution rules (Section 19) being put into operation at once. In our opinion the best interests of the country demand that there should be, notwithstanding the differences of opinion as to the ways and means, a feeling of respect and good-will between officials.

and the people. We shall educate the country to repudiate the suggestion that the obligations to be hereafter incurred should be ignored. Such a theory would strike at the very root of our progress and would impair our credit abroad and our stability at home. We hold that these and other reforms can only be brought about by strenuous campaign within the walls of the legislature. We are convinced that by attempting to paralyse the activities of the Government by withholding assistance when legitimately demanded and by observing a spirit of antagonism to the existing institutions, no good can be achieved. We are as anxious as the most advanced amongst our countrymen that education should be adequately provided, that there should be speedier and cheaper justice, that the Government of the Provinces should be entirely in the hands of the ministers and the racial animosity should disappear, but in our view these objects should be achieved not by endeavouring to wreck the constitution, not by withholding assistance to Government, but by joining it and pointing out to it the defects in as strong a manner as is consistent with loyalty. We are under no delusion as regards the suitability of diarchy to this country. It has been demonstrated in every province that it is unworkable. If the time limit is allowed to pass without a further advance in the constitutional reform the whole system of

Government would be reduced to a farce. Almost immediately an advance should be made in the direction of giving the people a complete responsible Government. We shall lose no opportunity to press this on the attention of the Government. We intend also educating the people regarding our aims

Mr. Seshagiri, on being further questioned, emphasised the state management of railways, the necessity of taking measures for improving the position of Indians over seas and bringing the currency policy to the pre-war standard, namely, the fixing of the price of a gold mohur at fifteen rupees”.

The
National
party.

15. The example of the Democratic Party was followed by the establishment of a second non-official party in the Assembly—the National Party. On many occasions it acted in concert with the Democrats but its programme is far more moderate and less aggressive. The members want steady progress and are ready to co-operate with the Government to a greater extent than the Democratic Party, though the ultimate political goal is the same—the attainment of complete self-government within the Empire. It may be reasonably expected that similar parties will arise in the Provinces after the next election if not sooner.

The
influence
of the
congress.

16. The Congress propaganda has succeeded in giving greater prominence to political issues over the communal and provincial ones. The Coun-

try is being organised on a political basis and an intense political education is going on in the far-off villages. This must ultimately react on political life of the country. In case the Non-Co-operators decide to participate in the administration—parties based on political principles are likely to claim the homage of the members of the Councils as well as of the Electorates

17. To transplant political institutions in a Country and to work them efficiently require a great deal of sustained effort and a certain amount of political education. Mainly to the people is the success or failure to be ascribed though it would be difficult to deny that circumstances peculiar to the country exert certain amount of influence on the issues. The prime requisites in India are political training, subordination of all personal and sectarian interests to national issues and high rectitude and ability in the leaders of the country. "No reform can produce real good, unless it is the work of public opinion and unless the people themselves take the initiative." (Buckle)

THE EXECUTIVE.

XI.

The Main Characteristics.

The
functions of
Government.

1. The functions of the Government in India are the most extensive and far-reaching. Decentralisation Commission tried to give an idea of its sphere of action, in a short compass. "The Government claims a share in the produce of the land, and save where, as in Bengal, it has commuted this into a fixed land tax, it exercises the right of periodical reassessment of the cash value of its share. In connection with its revenue assessments, it has instituted a detailed cadastral survey, and a record of rights in the land. Where its assessments are made upon large landholders, it intervenes to prevent their levying excessive rents from their tenants; and in the Central Provinces it even takes an active share in the original assessment of landlords' rents. In the Punjab and, some other tracts, it has restricted the alienation of land by agriculturists to non-agriculturists. It undertakes the management of landed estates where the proprietor is disqualified from attending to them by age, sex or infirmity or occasionally by pecuniary embarrassment. In times of famine it undertakes relief works and other remedial measures upon an extensive scale.

third of the whole area of India, and comprise more than one-fifth of its population "

The Control of the Secretary of State and Supremacy of the Parliament.

2. In the discharge of these multifarious functions the Government is responsible to the Secretary of State for India who is given by the Government of India Act all the powers and duties which formerly belonged to the East India Company and is specially authorised, subject to the provisions of the Act to superintend, direct and control all acts, operations and concerns which relate to the Government or the revenues of India and all grants of salaries, gratuities and allowances as well as other payments and charges out of or on the revenues of this country. The powers of control which the system provides are really very full and effective. Like other ministers of the Crown the Secretary of State for India is a member of the British Cabinet and is responsible for all his official acts to the Parliament of England in accordance with the constitutional practice of that country. The supremacy of Parliament over the Government of India had been unequivocally asserted in the preamble of the Act of 1919 where Parliament took upon itself the ultimate responsibility for the welfare and advancement of the Indian peoples.

3. The Parliament may exercise its power of control in one of these three different ways—by means of direct legislation, by controlling the

The Significance of the responsibility of the Parliament.

revenues of the country, or by calling to account the Secretary of State for any matter of Indian administration. Parliament as a rule does not specially legislate for India except in two directions—in amendments to the constitution and in sanctions granted for loans raised by Secretary of State for India. Nor does Parliament directly control the revenue and expenditure in India ; only a detailed account of the receipts and charges is annually laid before it. Parliament has the undoubted right of interference and may make its opinion felt “by questions, by amendments to the address, by motions to adjourn, by resolutions or by motions of no confidence” *i. e.* all the constitutional means open to Parliament to ensure the responsibility of the ministers to it. Another means of control has been added to it by transferring the salaries of the Secretary of State and his under-secretaries and other expenses of his department to the British estimates and consequently his policy and administration may be questioned by putting forward motions for reduction. But whatever may be the powers of Parliament, the most important fact in this connection, as pointed out in the Report, is “that it does not make a custom of interfering”, and the Indian administration is comparatively immune from parliamentary criticism. In the days of the East India Company, a regular inquest was held on the Indian administration before each renewal of the Charter but this pra-

actice ceased with the transference of the territories to the Crown in 1858. The real position of affairs was thus summarised in the Report of the Fisher Committee on the Indian Army Reforms—"The relations between the India Office and the Government of India are presumably based upon the importance of keeping the control of Parliament as far as possible intact over Indian expenditure. The theory, sound in itself in view of the bureaucratic form of Government in India, has proved to be illusory in practice. The business of Parliament is too great and too complex to enable any effective control to be exercised by the House of Commons over Indian expenditure. In practice, therefore, the control of the India Office has been merely the control of one bureaucracy over another." This remark is applicable to all spheres of Governmental activities in India and there is great divergence between the theory and practice in the Indian Constitution.

Moreover personal equation has a very important bearing on the relations between Simla and Whitehall. When the Viceroy is a man of strong personality, the Secretary of State merely becomes a convenient mouthpiece of his policy in Parliament, and in the reverse case he is treated merely as an agent of the India Office.

4. The Indian administration was a highly centralised one in which the Government of India exercised all its extensive functions, subject however

Centrali-
sation
vs.
Provincial
Autonomy.

to the control of the India Office. The Provincial Governments had practically no individuality; they were for all practical purposes merely agents of the Central Government. They were subject to general supervision and control by the Governor General in Council and the right of the Central Government to interfere with the minutest details of provincial administration could not be questioned, though in actual practice the Government of India merely laid down the general principles and watched the effect that was given to them in the Provinces. The main theory was that "the entire Government system was one indivisible whole and amenable to Parliament."

5. India is a vast country and every province has its own peculiar requirements and it was but natural that the uniform centralised system imposed by the Government of India, was found inadequate for the proper development of the provinces. The Indian politicians also came to recognise that popular influence could best be exercised in the local governments which would serve as fields for political training with the least danger to the state in case of failure. They therefore began to make determined attacks on the citadel of centralisation and strongly advocated the principle of Provincial Autonomy. The provinces in their internal affairs should be given the greatest latitude of action and only the affairs common to the whole country are to be reserved

for the Central Government. This demand gathered strength from the enunciation of the new principle as laid down in the preamble of the Act of 1919. Parliament asserted the political goal of this country to be the attainment of responsible Government and promised to take a substantial step in that direction. Parliament thus declared its readiness in some future date to transfer its responsibility for the administration of India to the Indians themselves and with every step forward in that direction the control of Parliament must be proportionately relaxed. As the first real step, the provinces are given in purely local matters the largest measure of independence of the Government of India which is compatible with the due discharge by the latter of its own duties. The Secretary of State has also partially relaxed his control over the Central and Provincial Reserved Subjects. But it is as regards the *Transferred Subjects* in the provinces that the relaxation had been almost complete and these have been to a great extent made over to the Provincial Electorates that are responsible for these departments. So we are justified in asserting that centralisation of the old type is irrevocably doomed and the future lies mainly with the provinces. Already the local governments have been allowed certain amount of independence and the next step is likely to make them completely independent of the Central Government in provincial matters and

responsible not to the Parliament but to the people of this country for the proper discharge of their duties. This may gradually lead to a federation in India in which the Central Government will enjoy all the powers not specifically assigned to the Provinces, like the Canadian Federation.

XII.

The Governor General in Council.

The
Executive
Council.

1. The Executive functions of the administration are vested in the Governor General in Council, whose powers are defined in comprehensive terms to be the superintendence, direction and control of the civil and military government of India, and *he is enjoined* to pay due obedience to the orders received from the Secretary of State for India. The Governor General is the head of the executive as well as the Viceroy, the representative of the Crown in India. He is appointed by His Majesty the King by warrant under the Royal Sign Manual on the advice of the Prime Minister and usually holds office for five years. The Executive Council is composed of seven ordinary members (three are Indians), one extraordinary member—the Commander-in-chief, with the Governor General as the President. There is at present no statutory limitation on the number of ordinary members. They are appointed by the king by warrant under the Royal Sign Manual ; three of them must have been in the service of the Crown in India for at least ten years and one must be a barrister of England or Ireland, a member of the Faculty of Advocates of Scotland, or a pleader of a High Court in India of not less than ten years' standing. The Commander-in-chief is an extraordinary member and has rank

and precedence in the Council next after the Governor General. The following portfolios are distributed among the ordinary members—Commerce and Railways, Home ; Education ; Finance ; Industries and Munitions ; Revenue, Agriculture and Public works and Law. The Foreign Department is under the direct control of the Governor General and the Army is under the Commander-in-chief. The term of office of the ordinary members is fixed by custom to be five years.

The
conduct
of
Business.

2. The Council may meet at any place as appointed by the Governor General in Council and all its functions may be exercised if only the Governor General or in his absence the Presiding Member and another ordinary member are present. All orders and decisions emanating from these meetings are deemed to be the action of the Governor General in Council and the business is transacted according to the rules and orders as framed by the Governor General. In case of difference of opinion the decision of the majority is binding and when the votes are equally divided the Governor-General or Presiding Officer has a second or casting vote. The meetings are private and the procedure is analogous to that of the English Cabinet. One of the Secretaries to the Government of India attends the meetings and takes down the decisions of the Council relating to his department.

3. The Governor General is the ex-officio

President of the Executive Council. He appoints another member to be the Vice-President who presides in the absence of the Governor General. When the President as well as the Vice-President are absent the senior ordinary member present at the meeting exercises all the powers of the President. But when the Governor-General is resident of the place where the meeting is assembled and is not prevented by indisposition from signing any act of Council made at that meeting, the act requires his signature and in case he refuses to do so, he will be deemed to have voted against the measure adopted at the meeting.

The
Functions
of the
Council.

4. The functions of the Governor General in Council which is conveniently designated the Government of India are all-embracing and cover the whole field of administration, civil and military, and even extend beyond the limits of British India. It has the statutory right to restore the demands for grants, reduced or totally refused by the Assembly ; and as the representative of the Crown in India, it has all the immunities, privileges and prerogatives appertaining to the Crown. It also enjoys the rights and privileges of the Indian monarchs who had been superseded by the British Government e. g., the rights in respect of land and minerals. The powers of the Governor General in Council as regards war and treaties have been, however,

expressly restricted by Statute. The Government of India cannot declare war, commence hostilities or make treaties on its own initiative. But when hostilities have been actually commenced or preparations have actually been made, the Governor General in Council is empowered to declare war, commence hostilities or enter into a treaty for making war against the prince or state actually committing the hostilities or making military preparations and also to guarantee by treaty the possession of a prince or state actually assisting His Majesty's Government against the enemies. In these contingencies the facts must be immediately communicated to the Secretary of State with the reasons for the commencement of hostilities or for conclusion of treaties. Lastly this body has certain legislative functions. The Government of India Act of 1870 enabled the Governor General in Council to legislate for the less advanced parts of India. This power of making regulations has been maintained by Sec. 71 of the Act of 1915. The Secretary of State in Council first declares by a resolution application or extension of the provisions of this section to a particular part of the country. Thereupon the local Government is allowed to propose draft regulations for the peace and good government of that part to the Governor General in Council and when approved of and assented to, these regulations have the force of laws. This power

is much availed of and numerous regulations are made, from time to time for the backward tracts.,

The
Responsi-
bility is
collective.

5. The responsibility for the official acts of the Central Government lies with the Governor General in Council. Law does not recognise the individual responsibility of the members, though in actual practice the minor questions are decided by the member at the head of the department and only the important issues or questions leading to a difference of opinion between two departments go before the whole Council. But the practice is not recognised by statute and the responsibility for every executive action is collective, even when an individual member is solely the author of it. Much however depends on the Governor General himself. He may suffer in actual practice a great latitude to the members by allowing them to initiate policies for their own departments but this departmentalism cannot shift the responsibility from the Council to the individual member.

The
Governor-
General
and
his powers.

Adminis-
trative.

6 The position of the Governor General in India is truly unique. He is the head of the Executive and the representative of the Crown in this country. His powers, subject to his responsibility to the Secretary of State and Parliament are immense and in actual practice he may very well be an object of envy to any autocrat, past or present. A brief summary of his statutory powers as well as those derived from

the King as his Viceroy are given below and this will clearly prove that the office of the Governor General is not only the most coveted and autocratic but also the most solemnly responsible, for on him depends the happiness of millions of mankind. The administration is entrusted to the Council, but sec 41. (2), of the Government of India Act empowers the Governor General to reject or adopt any measure against the decision of the majority, if he is of opinion that the safety, tranquillity or interests of British India or any part of it, are or may be essentially affected. The Governor General can thus take upon himself, whenever he likes, the responsibility for the whole administration even against the views of his own Council. But he is not empowered to do anything which he could not have done with the concurrence of his Council. The Governor General may also be authorised by his Council to exercise alone at his discretion, all or any of the powers which might be exercised by the Government of India, when he is on a visit to any part of the country unaccompanied by the Council. He may also on his own authority and responsibility during his absence from his Council, issue any order to any local Government and to any officer of the Crown, if he thinks it necessary, and in such a case his order shall have the force of one issued by the Governor general in Council. But a copy of such orders

has to be sent to the Secretary of State and these powers of the Governor General may be wholly or partially suspended, until further orders, by the Secretary of State in Council.

7. His financial power covers the whole field of expenditure. No proposal for the appropriation of any revenue or money for any purpose can be made except on the recommendation of the Governor General, and in cases of emergency he is authorised to incur any expenditure which he thinks to be necessary for the safety or tranquillity of British India or any part of it. Moreover it is optional on his part whether he allows any discussion on the Non-Voted items of the Budget in the Imperial Legislative Chambers ; but in practice he does allow such discussions on the part of the non-official members.

Financial.

8. He is a component part of the Indian Legislature and not only exercises a great deal of influence on ordinary legislation but is also empowered to legislate on his own responsibility. The Indian Councils Act of 1861 allowed an exceptional power to the Governor General in cases of emergency to make ordinances which were to remain in force only for six months and this emergency power has been secured intact to the Governor General by sec 72. The Act of 1919 gives extensive legislative powers to the Governor General. When he certifies that the passage of the bill is essential for the

Legislative.

safety, tranquillity or interest of British India or any part thereof, it becomes law even if rejected by one or both the chambers. Every such Act however must be laid before both the Houses of Parliament and must have His Majesty's Assent before it is put into operation. But even this safeguard is omitted in exceptional cases and the Governor General is empowered to bring such an Act into immediate operation if in his opinion "a state of emergency exists which justifies such action," though it may be vetoed by His Majesty in Council. Analogous legislative powers are given to the Governors of the Provinces by the same Act.

9. A large number of measures requires the previous sanction of the Governor General under section 67 of the Act and in these matters no legislation can be introduced unless specially authorised by him. The power of certification is another important instrument in his hands to prevent any legislation which is in his opinion undesirable. He has only to certify that a Bill or any part of it affects the safety or tranquillity of the country and no further proceedings can be taken in the matter. When a Bill is passed it requires the assent of the Governor General and this power of *veto* may be used to make it null and void. Thus the Governor General is given the statutory power to watch all legislations from their very inception and to make

them nugatory at any stage, if these are undesirable in his opinion.

Miscellaneous.

10. He has also many miscellaneous duties to perform. He can disallow a question or veto a Resolution on certain conditions and he has to discharge certain functions which are entrusted to him alone under the Indian Legislative Rules. All decisions on the doubtful points about these matters are left with the Governor General and these cannot be questioned in any Court of Law. He decides whether a matter is a Central or Provincial subject, whether an item of expenditure is to be included in the Voted or Non-Voted list and such other matters as have been left to him by the Rules, and in these cases his decisions are final.

His Duties as the Viceroy.

11. In addition to the statutory powers the Governor General is entrusted with certain duties by His Majesty in the Instrument of Instructions. He is enjoined to take the Oath of Allegiance and the Oath for the due execution of his office and for the due and impartial administration of justice and is also authorised to exercise the right of pardon on behalf of the king. He is advised by His Majesty to further the policy of the Parliament in India for the progressive realisation of self-government and to allow ordinarily the local Governments to pursue the policy advocated by the popular representatives and to act in harmony with the Indian Legislature, consistent

with the fulfilment of his responsibility to King and Parliament.

The
Salaries.

12. The salaries of the Governor General, the Governors and the members of the Executive Councils are fixed by statute. The Governor General in Council may grant a leave of absence to the members of his Executive Council, except the Commander-in-chief, under medical certificate for a period not exceeding 6 months. If the Governor-General, a Governor, the Commander-in-chief or a member of the Executive Council unless under a leave of absence, departs from India intending to return to Europe his office becomes vacant. Vacancies may also occur by death or resignation duly delivered to a Secretary of the Indian Government and provisions for them have been provided for in the Government of India Act.

OFFICIAL SALARIES.

OFFICER.	MAXIMUM ANNUAL SALARY.
Governor General of India	Rs. 2,56,000
Commander-in-chief	Rs. 1,00,000
Member of the G. G's Council (ordinary)	Rs. 80,000

XIII

The Governors in Council.

The
Provincial
Executive
Council.

1. The Provincial Executive is divided into two branches ; the Governor in Council is in charge of the reserved subjects and the Governor acting with his ministers is in charge of the transferred ones. This division signifies a great difference in principle. The ultimate responsibility for the reserved subjects lies with the Parliament and for the transferred ones to the Provincial Legislatures and through them to the Electorates. The Governors and the members of their Executive Councils are appointed by His Majesty the King by warrant under the Royal Sign Manual. The maximum number of members for an Executive Council is four and one of them must be a person who at the time of his appointment has been for at least twelve years in the service of the Crown in India.

The Provincial Executives.

Province.	Executive Councils		Ministers	Total	Official Salaries.	
	Europeans	Indians.			Governor	Members of the Council.
Madras	2	2	3	7	Rs. 128000	Rs. 64000
Bombay	2	2	3	7	" "	" "
Bengal	2	2	3	7	" "	" "
U P.	2	2	3	7	" "	" "
Punjab	1	1	2	4	Rs. 100000	Rs. 60000
B. & Orissa	2	1	2	5	" "	" "
C. P. & Berar	1	1	2	4	Rs. 72000	Rs. 48000
Assam	1	1	2	4	Rs. 66000	Rs. 42000
Burma	1	1	2	4	Rs. 100000	

Its
Powers.

2. The Governor in Council has powers over the reserved subjects analogous to those of the Governor General in Council over the Central ones. The meetings, their procedure etc. are conducted and framed in imitation of the Impe-

rial Executive Council. The Governor is also empowered on his own responsibility to exercise similar administrative, financial and legislative functions, except that he has no power to make ordinances. Over the reserved subjects the Governor in Council has extensive statutory powers and though he is advised in the Royal Instrument of Instructions to attach due importance to the views of the Legislature yet the ultimate authority lies with him alone.

The
Relations
of the
Governor
with the
Minister.

3. The most delicate part of his constitutional powers is that relating to his ministers. He is to appoint them from among the non-officials and they hold their office during his pleasure. He is enjoined in the Royal Instructions to assist the ministers by all the means in his power in the administration of the transferred subjects, and to advise them in regard to their relations with the Legislative Council and when dissenting from the opinion of a minister, he is asked to give due regard to the relations of the minister with the Council and to the wishes of the people as expressed by their representatives in the Legislature. In case of an important difference of opinion, the Governor has the constitutional right of dismissing the minister and appealing to the Electorate. When the new Council also supports the minister, the Governor is advised by the Joint Select Committee to accept the advice of the minister as a matter of constitutional practice.

4. The intention of Parliament is to hand over its own responsibility to the popular representatives as regards the transferred subjects. The local Government does not enjoy the power of restoration over the demands for grants relating to the transferred subjects, partially or completely refused by the Council, though the Governor is empowered in an emergency to authorise the expenditure which may be in his opinion necessary for the working of any department including the transferred ones. It is the clear intention of Parliament that the interference of the Governor in transferred subjects should be restricted to the utmost and the control of the Governor General and the Secretary of State has been much relaxed by the Devolution Rules and the Rules framed under Sec. 33 of the Act of 1919 for relaxing the control of the Secretary of State over the transferred subjects. A new political departure has been made in this branch of the Provincial Administration and it is true that certain element of responsibility has been introduced in the administrative machinery of India.

5. Parliament has left much to convention. Only the broad outlines have been chalked out by the Parliamentary statutes and the rest is to be filled in by constitutional practice. What will be the ultimate nature of the structure, none can foretell but it is expected by the Indian Politicians that the constitutional advance in

India should be on the same lines as in England and that the Government and the Legislature should try to evolve similar conventions in this country.

The
Relations
between
the Execu-
tive Council
and the
Ministers.

6. It is the duty of the Governor to encourage harmonious working between the two branches of his government. The Royal Instrument of Instructions enjoins him to encourage the habit of joint deliberation between himself, his councillors and ministers, so that the experience of the officers may be at the disposal of the ministers and the knowledge of the ministers as to the wishes of the people may be at the disposal of the Councillors ; but the ultimate decision on the reserved subjects lies with the Council and on the transferred subjects with the ministers and the responsibility for these two classes of subjects must be kept clear and distinct. The Governor is to decide questions at dispute and to arbitrate between the Councillors and the ministers.

Taxation
and Loan
Proposals.

7. The proposals for taxation and loans are considered by the Governor, the Councillors and the Ministers sitting together ; the decision lies with the Governor in Council if the proposal refers to a reserved subject and the Governor acting with his ministers if it relates to a transferred subject. The annual expenditure on both halves of the Government are settled by agreement between the Councillors and Ministers. In case they fail to agree the Governor may by order in writing

allocate the revenues and the balances of the province between the reserved and transferred subjects by specifying the fractional proportions of the revenues and the balances which shall be assigned to each class. This order of allocation remains in force for a specified period of time which may be either the period of office of the existing Legislative Council or a longer period not more than one year after its expiration. If the Governor does not like to take the responsibility he may refer this question to the Governor General and make the allocation in accordance with the terms of his decision.

XIV.

The Ministers. Their Constitutional position

The
Importance
of
Constitutional
Conventions.

1. In every constitution, convention plays a very decisive and important part. The English constitution which is the greatest example of an unwritten one, depends for its main characteristics on the conventions of the constitution. The appointment of the Prime Minister from the party having a majority in the House of Commons and joint responsibility of the ministers to the popular assembly owe their origin to conventions only. But even in written constitutions like that of U. S. A. etc., it exerts an influence which is astonishing. Sometimes the written laws come to be overshadowed by it.

2. India has been granted a constitution by the British Parliament. In the Government of India Act, we have a body of rules about the composition and functions of the executive, the legislature and the judiciary and their relations with one another. But even here the most important part of the constitution from the national point of view has been left to be *worked out by conventions*. How the conventions should grow, what ought to be their influence on the Indian constitution, are to be found partially at least, in the recommendations of the Joint Select Committee on the Government of India Act of 1919. This Report *supplements* the Government of India Act and

suggests the best method for the harmonious working of the different parts.

The Joint
Select
Committee
and its
Recommendations.

3. The Pronouncement of the 20th. August, 1917, for the first time enunciated the ultimate goal of British rule in India to be "the realisation of responsible government as an integral part of the British Empire." Mr. Montagu came to India to make a local enquiry about the question in all its bearings and interpreted the Pronouncement by putting forth a number of recommendations. He proposed that the first step towards responsible government should be taken in the provinces and this was accepted by Parliament. It is thus in the Provinces that certain subjects known as the "Transferred" ones have been entrusted to a branch of the executive which is responsible to the Legislature and ultimately to the Electorate in this country. The appointment of ministers, their functions and relation with the Council are consequently the most important part of the scheme. The hopes and aspirations of the people are centred round the ministers and an investigation about their position in the constitution is of utmost interest in Indian politics. The most noticeable feature of the Government of India Act of 1919 which strikes even a casual reader is its excessive leaning towards the executive. The Governor is armed not only with the veto but also with the power of certification ; and a provision is

also made for the temporary administration of the transferred subjects by the Governor, in case he disagrees with the policy of the ministers. The law as it is, if strictly interpreted without reference to constitutional practice, would make the ministers almost duplicates of the members of the Executive Council. The recommendations of the Joint Select Committee, however, modify the position of ministers considerably. The duty of the Indian politicians is to be always on guard against an unfavourable interpretation of the Act by the permanent executive for its own interests, and the growth of convention on a proper and legitimate line is a thing ardently desired by all well-wishers of the country.

The
Appointment of
the
Ministers.

4. The law categorically lays down that Ministers are to be appointed by the Governor and they must be non-officials. They are to be in charge of the transferred subjects and are dismissable by the Governor. They must be members of the Legislative Council or must be elected to it within six months of their appointment. The law thus gives an extensive field for choice and there is no bar to the appointment of Europeans and Anglo-Indians who are not in sympathy with Indian aspirations. Nor will it be difficult for the Governor to get Indian members from the rank of the plutocrats to support the views of the permanent executive. But this

Their
Responsi-
bility to the
Council.

provision of the law must be taken in conjunction with the recommendations of the Joint Select Committee. There the theory is expressly laid down that the ministers must enjoy the confidence of the majority of the Council. So, in spite of the free field left to the Governor for the choice of his ministers, his power is greatly curtailed by this constitutional theory which is not based upon law but dependent upon the proper growth of convention. Here the necessity for party organisation becomes imperative. The Council should be divided preferably into two parties, the majority having the privilege of supplying the ministers. The want of party organisation will sometimes enable the ministers to pass unpopular measures through the Council and even to defy it. The ministers will thus become merely a part of the bureaucracy while they ought to be the accredited spokesmen of the popular views, and their status and position in the country will mainly depend on the support which they command in the Legislature. Though they are to be appointed by the Governor and dismissable by him unlike the members of the executive council who are appointed by His Majesty by warrant under the Royal Sign Manual, yet the law gives analogous powers over the departments entrusted to them. The Joint Select Committee unequivocally lays down that "the status of the ministers should be similar to that of the members of the executive Council."

But the real position which they will come to occupy in the Government of the country will depend upon the fact whether they are capable of leading the people and guiding them according to their advice, otherwise there is every probability that they will fail to exert any influence for the welfare of the country and become a body of bureaucrats pure and simple and the whole experiment will be a lamentable failure.

The Salary
of the
Ministers
to be voted
every year
by the
Council.

5. The question of the salary of the ministers agitated the public but this has now been decided in support of the popular standpoint. In order to understand it in all its bearings, it is necessary to quote the relevant section of the Act and discuss the interpretation put on it by the Governors, The second para. of section 4 (1) of the Government of India Act of 1919, is as follows—"There may be paid to any Minister so appointed in any province the same salary as is payable to a member of the Executive council in that province, unless a smaller salary is provided by a vote of the legislative council of the province". This provision was interpreted to mean that the council had the right of exercising the vote only once and then the salary of the ministers became fixed for ever. It was therefore placed on the Non-voted list under section 11 (3)(iii) which lays down that no proposals should be submitted to the council relating to the "expenditure of which the amount is prescribed by or under any

law," here the law referred to according to the interpretation is the Government of India Act itself. This was however almost tantamount to a negation of the principle of responsible Government. The easiest and the most common means of deciding, in any country with responsible Government, whether the ministers have got the confidence of the Legislature is to propose a reduction of their salary and that the intention of the authors of the Montagu-Chelmsford Report, the Government of India Despatch of March 5th, 1919, and the recommendations of the Joint Select Committee were such can be conclusively proved, and there is nothing to show that the Act was meant to signify any other constitutional practice. The original proposal of the Montagu-Chelmsford Report was that the ministers should be "chosen by the Governor from the elected members of the Legislative Council" and "they would be appointed for the life time of the Legislative Council." Thus it was not contemplated "that from the outset the Governor should occupy the position of a purely constitutional Governor who is bound to accept the decisions of the ministers." The future development of the system as sketched by the Report was that after 5 years "the ministers would in fact become ministers in the parliamentary sense" and "that the minister's salary instead of being treated as reserved subject and therefore protected in the last resort by Governor's orders

from interference, should be specifically voted each year by the Legislative Council". Thus we find that the Report never contemplated that the salary should be on the non-voted list. The utmost that it proposed was that for the first 5 years, it should be included in the reserved list, thus giving the power to the Governor to restore it, if he differed from the Legislative Council. But this proposal of the Joint Report was not supported by the Government of India Despatch of March 5th, 1919, which recommended to do away with the intervening arrangement for the first five years. The Government of India strongly pointed out that whatever the initial position of the ministers might be in theory, it could not in practice but be one of "amenability to the Legislature which has the power to grant and withhold the supply". Their next recommendation was—"We see, therefore no alternative but to suggest that the number of ministers and their pay should be fixed by Governor, after consultation with the prospective minister or ministers when they first take office and placed upon the transferred estimates". All doubts about the position of the ministers were set at rest by the Joint Select Committee of Parliament—"The Committee are of opinion that the ministers selected by the Governor to advise him in the transferred subjects should be elected members of the Legislative Council, enjoying its confidence and capable of

leading it. A minister will have the option of resigning if his advice is not accepted by the Governor and the Governor will have the ordinary constitutional right of dismissing a minister whose policy he believes to be either seriously at fault or out of accord with the views of the Legislative Council. In the last resort the Governor can always dissolve the Legislative Council and choose new ministers after a fresh election ; but if this course is adopted, the Committee hope that the Governor will find himself able to accept such views as ministers may press upon him regarding the issue which forced the dissolution." We thus find that it was the considered opinion of the Government of India and the Joint Select Committee, to invest them with the dignity and prestige of parliamentary ministers as regards the transferred subjects from the very beginning. The question evidently was, whether we were justified in taking the view that Parliament extended greater security to the ministers as regards their salary in direct antagonism to the universal constitutional practice and against the deliberate intention of the Government of India, and the Joint Select Committee, which occupied the position of the most authoritative expositors of the Parliamentary Act, and in a manner which was anything but honest and straightforward. There was however a great stumbling-block to getting an authoritative exposition

of the Act, bearing on this subject from a court of law, as this is outside its competence,—Section 11 (3) lays down that the decision of the Governor is final “if any question arises whether any proposed appropriation of money does or does not relate to the heads of expenditure” given in that section, the third one of which was taken advantage of in placing the salary on the non-voted list. The Government of Bengal however promised to take the legal advice of the great constitutional lawyers of England. The interpretation of the Government of Bengal was declared fallacious and the earliest opportunity was taken in setting right this legal ambiguity; and the salary of the ministers was placed in the voted list, to be each year voted by the Legislative Council. The following remark of the Government of India (Despatch of March 5th. 1919) when discussing the relation of the ministers with the Legislative Council bears quotation—“The probability is, we anticipate, that owing to the entire novelty of representative methods in India, ministers may be inclined to show too little deference to a vote in the Legislature rather than too much” The truth of the remark is being forced upon the people by the conduct of the ministers in some of the provincial councils, specially in Bengal and Madras.

6. In matters of administration the ministers are the heads of the departments placed under their charge. Section 4 (3) lays down that “in re-

The
Powers
of the
Ministers.
(Adminis-
trative)

lation to transferred subjects the Governor should be guided by the advice of his ministers unless he sees sufficient cause to dissent from their opinion, in which case he may require action to be taken otherwise than in accordance with their advice". The formula "by the advice of" was used deliberately disregarding the proposal of the Government of India for the substitution of the phrase "after consultation with" and clearly implies a close approach to the position of ministers in self-governing countries with responsible governments. The orders of the ministers are deemed to be those of the Government itself but they are specifically distinguished from those of the other half of the Government. The recommendations of the Joint Select Committee are very clear on this point and lay down unequivocally the constitutional theory viz.—"The ministers who enjoy the confidence of a majority in their Legislative Councils will be given the fullest opportunity of managing their field of government which is entrusted to their care. In their work they will be assisted and guided by the Governor who will accept their advice and promote their policy wherever possible." Again it is stated that "the ministers will be given adequate power to fulfil their charge." In case the Governor disagrees with the advice of the ministers, he has the right of setting it aside ; the Joint Select Committee recommends that this should take place only "in circumstances roughly

Their
Relations
with the
Governor.

analogous to those in which he has to override his executive council ;" these circumstances are clearly defined in the Instrument of Instructions issued to the Governors at the time of their appointment. In such cases the ministers are expected to resign but they have a means left to them, to enforce their decision against the Governor if they are supported by the Legislature. What ought to be the constitutional practice in this matter has been depicted in the Joint Select Committee Report. The Governor has the ultimate right of dissolving the House and of choosing new ministers, but the Committee expects that he will accept the reiterated views of the ministers regarding the issue which led to the new election. This most important principle that the ultimate right of deciding between the Governor and his ministers in transferred subjects belongs to the Legislature has been clearly recognised, but it is better to mark that it has no legal sanction and the growth of this principle will very much depend on the capabilities of the ministers and their power of leading the legislature and of acting in concert with it. The importance of party-organisation in such matters will be discussed later on.

Their
Joint
Responsi-
bility.

7. Another important principle which has been recognised by Parliament and the Select Committee is the "Joint Responsibility of the ministers," i. e. they must belong to the same

political party and endorse the same programme. They should offer a united front and "should act together". Whether the vote of want of confidence against one of the ministers will lead to the resignation or dismissal of all of them has been left to future practice ; though in all countries with responsible government this is a well known constitutional convention.' When the policy of the ministers is decided by joint deliberation it is but logical that they should be jointly responsible. The recognition of the principle will go far to assure the constitutional position of the representative body but much will depend on the political education and organisation of the legislatures, and ultimately of the electorates. It cannot, however, be denied that this principle of joint responsibility has been recognised by Parliament only half-heartedly ; it would have been far more popular had the constitutional practice in England been consistently followed, namely, of entrusting the formation of the ministry to the leader of the party in power.

8. A picture of the working of the two halves of the government acting in concert has been depicted by the Joint Select Committee. There should be 'joint deliberation between the members of the executive council and the ministers in all important matters of public interest.' The Governor "will thus ensure that ministers will contribute their knowledge of people's wishes

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Relations
with the
Executive
Council.

and susceptibilities and the members of the executive council their administrative experience to the joint wisdom of the government. The responsibility, however, for the ultimate decision must rest with the part of the government in charge of the subject matter in question". If the recommendations be accepted in proper spirit the position of the ministers will be better than that of the members of the executive council. The permanent officials are bound to act according to the orders of the Governor who is their official head ; in the case of the ministers a great deal of latitude had been allowed. The Governor should advise the ministers about the right course to be adopted ; but if after hearing all the arguments the ministers should decide not to accept his advice, then in the opinion of the Committee "the Governor should ordinarily allow ministers to have their way, fixing the responsibility upon them, even if it may be necessary to veto any particular legislation." Lastly one half of the government should not be required to support by vote or speech the proposal of the other half with which it is not in sympathy. But in no case should the ministers act against each other by vote or speech in the Legislative Council.

The financial power
of the
Minister.

9. We next come to finance, the most important subject under the government. The Joint Report proposed that "the provincial budget should be framed by the executive government as a whole;

the ministers and the members of the executive council acting together." There are certain heads of expenditure which are put on the non-voted list and have not to be submitted to the Council at all. These are the first charge on the revenues; then come the votable items of the reserved and the transferred departments. The Government of India strongly protested against these proposals and submitted a new scheme about separate purse—"a division between the resources available for the purposes of the Governor in council and those available for the purposes of ministers, two separate pools instead of one." Thus the influence of the ministers, whatever it might amount to, would have been totally eliminated from the reserved subjects. The Act however, rejected the Government of India's scheme and the powers of the ministers as regards revenue, expenditure and taxation approximate to the proposals of the Joint Report and are based on Section II and rules under section I (1) (d). The main characteristics of the arrangement are to be found in the Joint Committee Report. The Budget should be framed as a result of the joint deliberations of the two halves of the government and the committee expect "that the relation of the two sides of the government in this matter as in all others should be of such mutual sympathy that each will be able to assist and influence for the common good the work of the other but not to exercise control

over it." But in case there is serious difference between the two sides of the government the Governor has the ultimate power "to allocate a definite proportion of the revenues" to the two parts. He may also require the assistance of the Government of India if necessary ; and to the Governor is entrusted "the task of holding the balance between the legitimate needs of both sets of his advisers." In financial matters as in purely administrative ones the ministers are sure to materially influence the government in case they are capable men and are strongly supported by the legislative council. But the difficulties of the ministers are likely to be very great. They are in charge of the "nation-building departments" which will necessitate a great outlay of money. They must face the unpopularity of fresh taxation and shall have to enlist the support of the executive council. Their position therefore is far from enviable.

The Necessity of
Vigilance
on the
part of the
Legis-
latures.

10. We thus find that the position and the power of the ministers are based on certain conventions that are expected to arise in this country as they have done in other self-governing lands. But here, the ministers will find a strong opposition against the growth of their influence and are likely to be overshadowed by the permanent officials, whose duties and functions are recognised in the body of the law and a very careful attempt has been made to secure them against popular encroachments. This over-solicitude on the part

of the Parliament is certainly due to the tacit recognition of the most important principle of popular government that the people when politically advanced and organised are sure to prevail against the executive. The fear of the Parliament that the ministers with the support of the legislature will come to exercise an undue influence over the reserved departments has led to the provision of so many safeguards. The Act, as it is, however, goes exactly the other way and so many opportunities are left to the Governor and the members of the executive council to influence the working of the transferred subjects that the Indian politicians have a reasonable cause of apprehension that the permanent executive will not abide by the spirit of the recommendations of the Joint Select Committee. Already we have good reasons of being sceptical about the success of this experiment and a situation is being created which makes people doubtful about the attitude of the permanent executive towards the working of the popular half of the government.

11. The recommendations of the Joint Select Committee have been repeatedly flouted. The Committee suggested that the salary of the ministers should be less than that of the members of the Council—"The Indian members of the Council of India in London should be paid a higher scale of remuneration than those members of the Council who are domiciled in the United

The Recommendations of the Joint Select Committee not generally accepted.

(a)
as regards
the Salary
of the
Ministers.

Kingdom. The same principle might suggest itself to the legislative council that it was reasonable for the ministers of the provincial government, domiciled in India, to be paid a lower scale of remuneration than the European members." It is needless for us to discuss here the propriety of the principle thus laid down. The resolutions about the reduction of the salaries of the ministers in the different provincial councils were prompted by the desire of some of the non-official members for a definite recognition of the fact that the higher posts in this country are valued out of all proportions to the resources of the country. It is surely too much to expect that the officials would vote for a resolution which is against their self-interest but their opposition to it is clearly against the views of the Committee. At least they should have refrained from taking sides in the issue.

(b)
and the
'official
Bloc.'

12. Again the question of "Official Bloc" has been recognised to be "the cause of great friction and heart-burning". Not only the Joint Report but also the Select Committee viewed it with great disfavour and the Committee definitely laid down that "all other official members (except the members of the Executive Council) of the Legislative Councils should be free to speak and vote as they choose". But the old system is going on as merrily as ever, and even the ministers are being brought into line with the officials and the

curious spectacle is being exhibited,—of ministers supporting the measures which they had condemned as private individuals. (e. g. the exodus to the hills). Is it un-reasonable that the people are viewing with distrust the attitude of the permanent executive towards the Reforms ? This led to a demand that the officials should refrain from taking a part in matters relating to the transferred subjects and a resolution to that effect was moved in the Bengal Council.

13. The greatest problem, at present, of Indian politics is how to safeguard the interests of the popular half of the Government against encroachments of the other and to ensure for the representatives of the people their legitimate share of influence over the affairs of the state. This is possible to a great extent by the growth of strong party organisations in the Councils. The party system is intimately connected with the Parliamentary schemes of government in Europe and America. It is never recognised by the constitutions of these countries but its existence is tacitly taken for granted and the framework of government is based upon it. In India party organisation is very loose and the result of this weakness on the part of the popular representatives manifests itself in various ways. The different members send in the same resolutions and the same amendments ; and this want of solidarity on their part gives a great

opportunity to the officials. The Councils sometimes do not know their minds as in the case of the Police Budget in Bengal last year, and the ministers have succeeded in retaining their offices even when overwhelmingly defeated in the council, as in Madras and on many occasions in Bengal,

14 A strong party organisation is needed to keep the ministers in their true position as the leaders of the people and not merely as the friends of the officials. Moreover, a determined effort should be made for achieving single and collective responsibility for the transferred subjects. This is the pivot of parliamentary government and the sooner it is recognised the better. The ministers must share the same political views, act in concert and be responsible singly and collectively to the councils "The organisation of parties through the agency of party spirit, party contest and party unity" makes this state of things possible.

Party Organisation
wanted to
safeguard
the popular
interests.

XV.

The Indian Civil Service.

The Origin
of the
Civil
Service

The
Covenanted
Service.

1. With the accession of territories under the East India Company, the pay and training of the Writers, Factors and Merchants of the Company were found inadequate for the administrative work entrusted to them. These officers performed their duties very indifferently and corruption was highly prevalent. Lord Cornwallis reorganised the administrative branch of the Company's Service (The East India Company Act, 1793) and this came to be known as the Covenanted Civil Service of India. The members of this body were required to enter into a Covenant with the East India Company by which they were bound not to trade, receive presents etc. and this practice is continued even at the present time. In return, the Company provided handsome salaries and reserved the principal administrative posts for this service in order to attract the best men available in England. At first the appointments were made by the Directors but the Government of India Act of 1853 threw them open to competition among natural-born subjects of Her Majesty and the system was continued by the Act of 1858 which transferred the government of this country to the Crown.

2. The competitive examination was held only in London and the Indian candidates

laboured under great difficulties. Parliament provided *additional facilities* for the natives of this country by an Act of 1870 (33 Vic. C. 3) and authorised the appointment of Indians of proved merit and ability" to any of the offices reserved for the members of the Covenanted Civil Service and these new officers were known as Uncovenanted or "Statutory" Civilians. The intention was to recruit one sixth of the appointments reserved for the Covenanted Civil Service in this Country, subject to the rules to be framed by Governor General in Council with the sanction of the Secretary of State in Council. This system was brought into operation by Lord Lytton in 1879 but was given up in 1889. Only sixty appointments were made during these ten years.

The
Aitchison
Commis-
sion.

3. In 1886 a Commission was appointed by the Government of India with Sir Charles Aitchison as the President with instructions "to devise a scheme which might reasonably be hoped to possess the necessary elements of finality, and to do full justice to the claims of natives of India to higher employment in the public service." It recommended the abolition of the system of "Statutory" Civilian and the establishment of a Provincial Civil Service which was formed by the amalgamation of a certain number of the higher appointments of Uncovenanted Civil Service with a number of appointments previous-

ly reserved for the covenanted civil service. The recruitment to the higher service was by open competition in London while the Provincial Service was and is wholly recruited in this Country.

The
Islington
Commis-
sion.

4. In July 1912, a Royal Commission was appointed of which Lord Islington was the Chairman and of which the Terms of Reference were as follows :—

To examine and report upon the following matters in connection with the Indian Civil Service and other Civil Services, Imperial and Provincial :—

(1) The methods of recruitment and the systems of training and probation.

(2) The conditions of service, salary, leave and pension.

(3) Such limitations as still exist in the employment of non-Europeans and the working of the existing system of division of services into Imperial and Provincial, and generally to consider the requirements of the Public Service and to recommend such changes as may seem expedient.

The Commission visited India in 1912—13, toured extensively and took evidence on these matters. The Report was published in January 1917. On August 20, 1917 came the announcement of Parliament for the increasing Association of Indians in every branch of the adminis-

tration and the Montagu-Chelmsford Report suggested certain modifications. The final conditions are embodied in the Government of India Resolution of December 1920, on the Public Services Commission.

The
Govt. of
India
Resolution.

5. The Resolution lays down that the division of the Services into Imperial and Provincial is not based on any artificial distinction but is due to the nature of the work entrusted to each branch. Consequently the organisation of the services remains the same. The Imperial branch is named the Indian Civil Service and the Provincial branch is named after the province in which the members are serving (e. g. the Bengal Civil Service) and the recruitment of military officers for filling the posts in the Civil Service is completely stopped.

6. The recruitment for the Indian Civil Service is effected by the following methods :—

The
Recruitment
to the
Service.

(1) An open competitive examination in London ; (2) a separate competitive examination in India , (3) nomination in India ; (4) promotion from the Provincial Civil Service ; (5) appointment from the Bar.

(a)
Examination
in London.

(1) The competitive examination in London remains the main channel of entry to the service and is open to all British subjects ; but Indians successful in the examination are not allotted to Burma nor successful Burmese to India. The age limits for admission to the examination are

21 to 23 years (reckoned from 1st. August in the year in which the examination is held) and the period of probation is 2 years. The syllabus for the examination, the details of the probationary course etc. are settled by the Secretary of State in Council with the advice and assistance of the Civil Service Commissioners whose duty is to carry out the examination and to recommend candidates for appointment in order of their proficiency as shown in their examination.

(2) Separate Competitive Examination in India :—

(b)
The
Examination
in India.

The age limits are the same and the conditions under which the examination is to be held are determined by the Secretary of State in Council in consultation with the Civil Service Commissioners. Of the recruits selected in India (exclusive of those promoted from the Provincial Service or directly appointed from the Bar) at least 67 p. c. are to be obtained through the competitive examination.

(c)
Nomination.

(3) It will depend upon the result of the examination whether the rest (i. e. 33 p. c. of the total recruitment in India) will be filled up by direct nomination or selection from among the candidates who sat for the competitive examination and attained certain qualifying standard. Only when the various provinces and communities are unfairly represented in the distribution of successes in the examination, that nomination

will be resorted to. The candidates recruited in India either by competitive examination or by nomination are sent to the United Kingdom for a two years' course of probation

(d)
Promotion.

(4) The members of the Provincial Service when promoted to hold the posts ordinarily filled up by Civil Service men will in future have the same status as the regular members of the Indian Civil Service and enjoy the same opportunities of promotion. These officers as well as the members of the Bar appointed to hold superior appointments ordinarily held by the Civil Service men are not to be admitted to the Civil Service itself but they rank with the Civil Service officers and are eligible for all posts in the civil service grade.

(e)
Appointment from the Bar.

(5) A certain number of District Judges are to be appointed by the Local Governments direct from the Bar as an experimental measure. Ultimately 40 posts will be filled up in this way if qualified men are available, and for the purposes of these appointments Vakils and Advocates of High Courts and Pleaders of Chief Courts are eligible as well as Barristers.

7. The offices reserved for the members of the Civil Service by the Act of 1919 are the following.—

A. Offices under the Governor General in Council.

Reserved
Posts.

1. The offices of secretary, joint secretary, and deputy secretary in every department except the Army, Marine, Education, Foreign, Political and Public Works Departments : Provided that if the office of the secretary or deputy secretary in the Legislative Department is filled from among the members of the Indian Civil Service, then the office of deputy secretary or secretary in that department, as the case may, need not be so filled.

2. Three offices of Accountants-General.

B. Offices in the provinces which were known in the year 1861 as "Regulation Provinces"

The following offices, namely—1. Member of the Board of Revenue ; 2. Financial Commissioner ; 3. Commissioner of Revenue ; 4. Commissioner of Customs ; 5. Opium Agent ; 6. Secretary in every department, except the Public Works or Marine Department ; 7. Secretary to the Board of Revenue ; 8. District or Sessions Judge ; 9. Additional district or sessions Judge ; 10. District Magistrate ; 11. and Collector of Revenue or Chief Revenue officer of a district.

In addition to these posts a large number of Civilians are employed in the Native States and hold responsible positions in the Customs, Police, Salt, Post Office, Municipalities and other departments.

Indian
Recruitment.

The Percentage of Indian recruitment in the service has been fixed by the Government of India with the approval of the Secretary of State. The “proportion of 33 per cent, rising by one and half per cent annually for 10 years to a maximum of 48 per cent will be taken as an all-round figure to cover the total Indian recruitment from all sources, including promotions from the Provincial service and appointments from the Bar. The number of Indians to be recruited in India by examination and nomination will be fixed each year after taking into account the number of Indians recruited in other ways, including the open competition in London.” It is claimed that this scheme was adopted as the result of the suggestion made in para. 317 of the Joint Report on the Indian Constitutional Reforms. But in reality, there is a great deal of deviation from the promise. The relevant portions of the Report are given below.—

“It is obvious that we cannot rely on the present method of recruitment in England to supply a sufficiency of Indian candidates. That system must be supplemented in some way or other ; and we propose to supplement it by fixing a definite percentage of recruitment to be made in India. This seems to be the only practical method of obtaining the increased Indian element in the services which we desire” ; and again—“The Commission (the Public Services Commission) recommended that 15 per cent of the superior

posts of that service (the Indian Civil Service) should be recruited for in India. We consider that changed conditions warrant some increase in that proportion and we suggest that 33 per cent of the superior posts should be recruited for in India and that this percentage should be increased by $1\frac{1}{2}$ p c. annually until the periodic commission is appointed which will re-examine the whole subject ”

There can be no shadow of doubt that the percentage suggested by the Report for recruitment in India is the minimum and this was in addition to the Indian candidates successful in the competitive examination held in London. The interpretation in the Government of India Resolution converts the minimum into maximum, which moreover includes the promotions from the Provincial service and the appointments from the Bar which are outside the regular grade. The Joint Report failed to satisfy the Indian demands and even the concessions promised there have been denied to the people by ingenious subterfuges.

The
Future.

We shall now examine the future results of the new scheme of recruitment as adopted by the Government. In 1913 only 46 out of 1370 Civilians on the cadre were natives of India i. e. the percentage of Indians was about $3\frac{1}{2}$. In 1922 the number of Indians in the service was about 13 p. c and in 20 to 25 years the percentage will increase to only one-third of the total.

The progress of Indianisation of this service will at least suggest the period of time that will be necessary for attaining full responsible Government for India as viewed by the framers of the Joint Report. They suggested—"We regard it as necessary therefore that recruitment of a largely increased proportion of Indians should be begun at once. The personnel of a service cannot be altered in a day. It must be a long and steady process; if therefore, the services are to be substantially Indian in personnel by the time that India is ripe for responsible government, no time should be lost in increasing the proportion of Indian recruits." In 25 years the increase will be only 33 p. c. and if the yearly increment of $1\frac{1}{2}$ p.c. be continued after the first period of 10 years (which is highly doubtful) it will require 70 years to completely indianise the service and if the recruitment in India be 50 p. c., after 35 years the proportion will be only half in the whole civil service cadre. This is a dreary future and unless important modifications are introduced to satisfy the Indian claims the prospect of a well-ordered constitutional progress will be much jeopardised.

The Powers
of the Civil
Service.

Practically the whole administration is entrusted to the Civil Service. It "has for over one hundred years in practice had the administration entrusted to its hands, because with the exception of the offices of the Governor General, Governors

and some members of the executive councils it has held practically all the places involving superior control." At present the members of this service are eligible for Governorship also. Thus the Indian Civil Service "has been in effect much more of a government corporation than of a purely civil service in the English sense", and "it regards itself as the Government." The introduction of the popular element in the government must change this state of things. The Joint Report took cognisance of the changed circumstances and its suggestions are based on the following principle—"We shall be wise to minimise by every means that human foresight can devise the friction which a change in a long established system tends to produce. Our aim throughout must be to make the change not needlessly difficult for the services, to enlist their cooperation with the popular element in the Government, and to induce on both sides the habit of good will and mutual toleration, which is essential if India is to pass peaceably through the trying transitional period in front of her." It is however extremely difficult for the civil service to fall in with the new order of things. They had so long ruled over the country as its masters and it is practically impossible for them to be contented with the new role assigned to them. Parliament has taken special precautions for safeguarding their interests. They cannot be dismissed by any authority in

Their
Privileges.

India ; they have a right of complaint direct to the Governor against their official superior in a province, if they think themselves wronged by any of his orders ; and they retain all their existing or accruing rights and shall receive such compensation for the loss of any of them as the Secretary of State in Council may consider just and equitable. (sec. 36. Act of 1919). They thus occupy such a privileged position that they can defy the authority in India, specially the Popular Executive, with a great measure of impunity. It is but natural that they refuse to participate in any policy chalked out by a popular Minister, if it goes against their pre-conceived ideas. They are impatient of any popular demands and already some of the ministers are finding it extremely difficult to carry on the administration with the help of their subordinates. This fact was openly given out in the Council by the Hon'ble Mr. Madhusudan Das. That the Civil Service has changed very little in its attitude towards Indian affairs would be apparent to everybody. They are not satisfied with the huge increments of their pay and pension and are ever clamouring for more, without the least thought about the impending bankruptcy of the Imperial and Provincial Administrations. And they always offer a determined opposition here as well as in England to all political progress in this country and form a body of reactionaries with whom it is practically

impossible for the Indian Statesmen to co-operate.

There are three means left to us to remedy this state of affairs.—

The remedies suggested. • (1) It is not only necessary but also natural that the Indian Civil Service should be placed under the full control and supervision of the Government of India. The Parliament promised to transfer the administration to the people of this country, though but gradually, and ought to have been prepared as a preliminary step to allow the Government of India to have exactly the same authority which every government enjoys over its executive officers. But a very curious arrangement has been effected and the executive officers are in a position to set at naught the considered views of the superior authority. This is due mainly to the suspicion about the future attitude of the popular bodies towards the service. But it ought to be taken into account that such oversolicitude for its interests would lead to a reaction against it and would stand in the way of gradual reapproachment between the people and the members of the service, and instead of good-will and co-operation there is likely to arise a spirit of opposition and hostility.

1. Full control over the Service.

2. Voluntary Retirement of the Disaffected.

(2) It is needless as well as injurious to the interests of the country to keep in its service a body of men who are not in sympathy with the

aspirations of the people and find it difficult to carry on their work under the changed conditions. They ought to be allowed to retire from the service and a just and equitable compensation must be offered to them. The conditions of service have changed for reasons which they could not anticipate and if they refuse to participate in the administration under the new circumstances, it is but just that every opportunity should be given to them to leave this country. Already the members of the services are being allowed to retire on very advantageous terms, if they find it irksome to work under the Reformed Government. This practice should be continued whenever important modifications are introduced in the terms of the service. This scheme may be adopted for obviating all opposition to the transference of the control and supervision over the service to the Government of this country.

3. Increase
in Indian
Recruitment.

(3) Lastly we come to the admission of the Indians to the service. This is the best method for effecting a change in the character of the Service. The Joint Report supports the Indian claim for two very important reasons. "It is a great weakness of public life in India to-day that it contains so few men who have found opportunity for practical experience of the problems of administration. Administrative experience not only sobers the judgment and teaches appreciation of the practical difficulties in the way of the wholesale introduction

of the reforms, however attractive, and the attainment of theoretical ideals, but by training an increasing number of men in the details of day-to-day business it will eventually provide India with public men, versed in the whole art of government. If responsible government is to be established in India there will be a far greater need than is even dreamt of at present for persons to take part in public affairs in the legislative assemblies and elsewhere ; and for this reason the more Indians we can employ in the public services the better. Moreover it would lessen the burden of Imperial responsibilities if a body of capable administrators could be produced." But the framers of the Report refuse to give full effect to these principles and bring about a complete change of policy on grounds which are not fully convincing. They have an extremely high opinion about the Indian Civil Service and are afraid that the introduction of a large Indian element would impair its efficiency. "The characteristics which we have learned to associate with the Indian public services must as far as possible be maintained ; and the leaven of officers possessed of them should be strong enough to assure and develop them in the service as a whole. The qualities of courage, leadership, decision, fixity of purpose, detached judgment and integrity in her public servants will be as necessary as ever to India". This however presents us only with the bright side of the picture.

The Demerits of the Present system

We have also to take into consideration the shortcomings of the system. To entrust the administration to a body of men who are actuated by no feeling of reverence and affection for the culture and civilisation of the ruled cannot achieve much in the higher spheres of state's activities. A mere police state cannot be our ideal and an unnecessary conflict is brought about between the two cultures on account of the favoured position enjoyed by one. This could have been obviated if the two had met together on terms of equality and the result would have been conducive to the welfare of the whole world. That the qualities enumerated above are not inherent in the European would be evident to us, if we consider the state of affairs, before the reorganisation of Lord Cornwallis, nor can it be said that the Indians are lacking in them, though it must be recognised that it is very difficult for one race to appraise the qualities of the other at their true worth. What is eminently desirable is the fusion of the two cultures and this can be brought about more effectively by the introduction of a high percentage of Indians in the services who are thoroughly trained in the arts and sciences of the west. To keep the services practically filled up by Europeans leads to a sense of humiliation on the part of the Indians and brings on a spirit of resentment not only against the ruling race but also its civilisation. Moreover the system entails a great loss to India. The

mature judgment and experience of these officers are lost to India when they retire from this country.

The demands of the Indian statesmen of the moderate school are thoroughly reasonable. They want to increase the percentage of recruitment in India and to throw open both the competitive examinations in India and London to Europeans and Indians all alike. This will be a fair test of fitness and the number of admissions of the Indians would depend upon the competitive examinations and they would be freed from the present arrangement which lays down the maximum for Indian admissions. This scheme must be adopted for all the services so that the Indians may have the full share to which they are entitled by their attainments and abilities. There is also no reason why the civilians should be employed in any but the reserved posts. It is no use pretending that they are capable of any and every work. When expert knowledge is necessary, experts may be brought from wherever available, but otherwise those posts ought to be filled up by Indians. The civilians have already got a large number of posts reserved for them and they should not covet for more and deprive the children of the soil of their legitimate share.

Another Royal Commission on the Indian Services has been appointed by the Government at the teeth of Indian opposition. The Legislative

Assembly twice recorded its emphatic protest against this action. The Indians think that the commission is only a means for the further increase of the emoluments of the Services. The most moderate view, in this connection, was put forward by the Rt. Hon. Srinivasa Sastri—"I contend that their claims to relief are sternly limited and may be completely negated by the low condition of public finance and the intolerable burden on a notoriously poor tax-payer..... No Commission, however authoritative, can reconcile us to increased impositions on account of the British Services "

THE JUDICIARY.

XVI.

The Law.

The origin
of Law.

Legislation is an important function of the modern state. But in ancient times the state was not deemed to be the source of legislation, and as we go back upon the history of Law, we very soon reach a point at which the Austinian theory of Law being the order of the state, is helpless to explain the facts. Here comes in another "source of law"; it is not a command of the state direct or indirect but may be embodied in the work of a private composer. The customs of a people had an authority which for some reason or other, great,

masses of men felt themselves bound to follow. Though not the work of the state nor recognised by it, yet the essential ideas of law are there and the people did not even consider the possibility of disregarding them. The Leges Borbarorum of the Teutons, Code Hamurabi of Chaldaea or the Code of Manu in India are not legislations in the modern sense of the word. These are merely the records of the customs and usages of these peoples and in India, even at the present time codified laws and customary laws exist side by side.

Hindu and
Muhamadan
Laws.

When the English conquered India, they found two great systems of customary laws in the country—the Hindu and the Muhamadan. Each was closely bound up with religion and the social habits of the people and was contained in treatises of more or less antiquity and authority. There was also a large mass of customs relating to the occupation and use of land, the transfer and pledging of property and contracts. Certain penal rules were drawn from the Muhamadan law and were enforced by the Muhamadan rulers.

Their
defects.

The indigenous law was mainly personal and highly defective. Certain branches were non-existent, such as Civil and Criminal Procedure and Torts ; and in the law of property, contract and crimes, some departments were altogether wanting. The British officials adopted the "line of least resistance" and accepted and carried out what they found. They applied Muhamadan law to

the Muhamadans and Hindu law to the Hindus, as regards Marriage, adoption, other family relations and succession to property. But where the pre-existing customs were not sufficient to constitute a body of law, the English were compelled to apply English law or to supplement the Indian customs by common sense.

Codification
by the
English.

A regular system of procedure modelled after that of England was established in 1781 by an Act of Parliament which empowered the Government of India to make regulations for the conduct of business in the provincial courts; the Supreme Court at Fort William was previously authorised to do so by the Act of 1773. The English however were put into a great difficulty as regards the penal law. A number of regulations was passed and the Muhamadan law of crimes was amended from an English point of view. The criminal law thus became a mere patchwork and full of confusions. The Charter Act of 1833 provided for the appointment of a body of experts, the Indian Law Commission, to enquire into and report upon the courts, procedure and the law then existing in India. Macaulay was a member of this Commission and prepared a draft of the Penal Code. A second Commission was appointed in 1853 and it secured the enactment of the Penal Code and the Codes of Civil and Criminal Procedure. The work of codification thus began in India; and Acts on various topics have been.

passed e. g. Evidence, Limitation of Actions, Specific Relief, Contracts, Trusts, Transfer of Property, Succession etc. Except for these codes, Hindus, Muhamadans, Sikhs, Buddhists all live under their respective customary laws.

The Penal Code and the two Codes of procedure are an unmixed gain and the other Acts have on the whole tended to improve the substance of the law as well as to make it more accessible. . It may very well be surmised that the future course of legal development will be marked by a process of equalisation and assimilation ; and all those departments of law whose contents are not determined by conditions peculiar to India, will be covered by further codifying acts, applicable to Europeans and Indians alike.

XVII.

The Courts.

The
Adalats.

The reorganisation of the judicial system of the country was effected by Warren Hastings (1772). *Diwani Adalats* were established in every district for the trial of civil cases and were presided over by European Zillah Judges who were helped by Hindu and Muhamadan law officers. The petty suits were tried by Registers, Sadar Amins and Munsiffs. Over these district courts were set up the provincial civil courts of appeal

with four European Judges. The ultimate court of appeal for the whole province of Bengal was the *Sadar Diwani Adalat* and this was composed of the Governor and his Council. For the trial of criminal cases Mufassil Nizamat Adalats were set up and the final court of criminal appeal was the *Sadar Nizamat Adalat*.

The
Supreme
Court.

The Regulating Act of 1773 set up the Supreme Court at Fort William in Bengal composed of a Chief Justice and puisne judges who were all English lawyers. The establishment of the new court, however, led to certain difficulties. The Supreme Court under the charter constituting it had full jurisdiction over all matters in Bengal, Behar and Orissa. But the Act as well as the charter were silent about the relations between this Court and the Executive and did not recognise the existence of the *Adalats*. Moreover the Supreme Court administered the English law which was utterly unsuited to the conditions of the country. The result was utter confusion and the existence of two antagonistic judicial systems led to difficulties and disputes which were however set at rest by the Act of 1781. The Governor General and his Councillors were exempted from the jurisdiction of the Supreme Court and its powers were distinguished from those of the *Sadar Adalats*.

The Indian High Courts Act of 1861 led to the amalgamation of the Supreme and Sadar Courts.

The High
Courts.

Under this Act, High Courts were set up in each Presidency by charters issued in 1862 and reissued in 1865. A new High Court was established in Allahabad by a charter in 1866. Each High Court is composed of a Chief Justice and a number of puisne judges to be determined by His Majesty. The maximum number of judges including the Chief Justice and the Additional Judges is twenty. The Judges must be barristers of England or Ireland or members of the Faculty of Advocates in Scotland of not less than five years' standing ; or members of the Indian Civil Service of not less than ten years' standing with at least three years' experience of a district judge ; or subordinate judges of five years' experience ; or Vakils of High Courts of not less than ten years' standing. At least one-third of these posts including the Chief Justice but excluding the Additional Judges is reserved for the barristers and the advocates and not less than one-third for the members of the Indian Civil Service.

The
Judges :
their
qualifica-
tions and
privileges.

The Judges of the High Courts hold their offices during His Majesty's pleasure and their salaries, furloughs, pensions etc. are regulated by the Secretary of State in Council. The rank and precedence of the Judges are determined by seniority of appointments ; the Chief Justice however has always rank and precedence before the other judges of the court.

The temporary vacancies in the High Court at Calcutta are filled up by the Governor General in Council and in the case of other High Courts by the Local Governments concerned. The acting Chief Justice however need not be a barrister. Vakils are eligible for the temporary vacancies.

The
Jurisdiction
of the High
Courts.

The High Courts have the full jurisdiction formerly exercised by the Supreme and Sadar Courts. In the Presidency towns these have the ordinary original jurisdiction in respect of all civil suits except small causes and an appeal from a judge in the original side lies to a bench on the appellate side. The extraordinary original jurisdiction enables the High Courts to remove and try suits on the file of a subordinate court for the furtherance of the cause of justice. Moreover the High Courts are the final courts of appeal, revision and reference in all civil and criminal suits except when an appeal lies to His Majesty in Council and is heard by the Judicial Committee of the Privy Council in England. The ordinary original criminal jurisdiction is confined to those persons who are outside the limits of the jurisdiction of any other court and the extraordinary criminal jurisdiction is confined only to the Presidency towns. In the original criminal cases before the High Courts, the trials were conducted with the help of juries but they are not employed in civil cases in this country.

The High Courts exercise general supervision over the subordinate Courts. The returns are to be regularly sent to them and they have the power to direct the transfer of any suit from one court to another of equal or superior jurisdiction. They have also the power of framing rules regulating the practice and proceedings of the subordinate courts, of prescribing forms for any proceedings in such courts and for the mode of keeping any books, entries etc. and of settling tables of fees for the attorneys, clerks and other officers. But these rules, forms and tables require the previous approval of the Governor General in Council in case of Bengal and of the Local Governments in other provinces.

In some of the other provinces the Chief Courts took the place of the High Courts; the main difference between these two types is that the Chief Courts derive their authority from the Indian Legislature and not the British Parliament. In the rest of the provinces the highest Courts of Justice are presided over by the Judicial Commissioners who are appointed by the Government of India and derive their authority from the Indian laws.

Every province excluding the Presidency towns is divided into a number of sessions divisions consisting of only one district or more. Every such division has a Court of Sessions presided over by a Sessions Judge and helped by Additional or

The
Chief Courts,

The Judicial
Commissioners

Criminal
Courts.

(a) Sessions
Courts.

Assistant Judges, if necessary. These courts are empowered to try all persons legally committed before them and may inflict any punishment allowed by law ; every sentence of death, however, requires the confirmation of the highest court in the province.

The Jury. The trials before the Sessions Courts are conducted with the help of the assessors or jurors. The assessors merely help the presiding judge with their opinions but their decisions are not binding like those of the jurors. The Sessions Judge when he differs from the decision of the majority of the jury, has however, the right of submitting the case to the High Court which has the power of setting it aside or of modifying the finding of the jury.

(b) The Courts of the Magistrates. Next we have the Courts of the Magistrates who are recruited partly from the Indian Civil Service and partly from the Provincial Services. They are divided into 3 classes. The first class magistrates are empowered to pass a sentence of 2 years' imprisonment and a fine of Rs. 1000 ; second class magistrates 6 months' imprisonment and a fine of Rs. 200 ; the third class magistrates one month's imprisonment and a fine of Rs. 100. The Government also makes provisions for the appointment of Honorary Magistrates. In the Presidency towns the Presidency Magistrates are appointed to try the minor cases and to send

up to the High Courts the persons charged with grave offences,

The Right of Appeal. The law allows considerable latitude as regards appeal. An appeal against the conviction of a 2nd. or 3rd. class magistrate lies to the District Magistrate or a first class magistrate when specially authorised. The original conviction of a magistrate of the 1st. class is appealable to the District Magistrate ; while against the original conviction of the District Judge an appeal lies to the highest court of the province. The prerogative of mercy is exercised by the Governor General in Council and the Local Governments ; the ultimate power however resides with the Crown.

The Civil Courts. The Civil Courts may broadly be divided into 3 classes. Ordinarily a district has a District and Sessions Court presided over by the same person and as a District Court it is the chief Civil Court of original jurisdiction. The posts are mainly held by the members of the Indian Civil Service though some appointments are made from the Bar and the Provincial Judicial Service.

(b) Sub-Judges. Then we come to the subordinate Judges who have co-extensive original jurisdiction with the District Judge. The lowest Civil Courts are presided over by the Munsiffs who ordinarily try suits not exceeding Rs. 1000 in value which may

(c) Munsiffs. be extended to Rs. 2000. Besides these courts there are certain Small Cause Courts for the summary disposal of simple money suits. In the

Mufassil these suits must not exceed Rs 500 in value, though sometimes extended to Rs. 1000. Where such special courts have not been established, the Local Government may confer upon some of the Sub-Judges and Munsiffs the jurisdiction of trying small causes—Rs. 500 in the case of Sub-Judges or Rs. 100 in the case of Munsiffs. The Presidency Small Cause Courts try the petty cases ; they have the power of disposing of money-suits upto Rs. 2000 in value, and when the parties agree of even higher value. Thus they relieve the High Courts that have original jurisdiction within the Presidency towns.

The Right
of Appeal in
Civil cases.

In Civil cases also the parties have an extensive right of appeal. An appeal from the decision of the Munsiff lies to the District Judge who may transfer it to a Sub-Judge for disposal. From the Court of the Subordinate Judge the appeal goes to the District Judge but in case the value of the original suit exceeds Rs. 10000 the appeal lies directly to the High Court. The decisions of a District Judge may be taken on appeal to the High Court.

The Composition of the Legislative Councils.

	A. Nominated (a).			B. Elected.											Total.	REMARKS.						
	Officials, (b)	Non-officials.	Total (c)	General.								Communal.					Special.					
				Non-Muhamadan-Rural.	Non-Muhamadan-Urban.	Muhamadan-Rural.	Muhamadan-Urban.	Europeans.	Anglo-Indians	Indian-Christians	Sikhs.	University.	Land-holders.	Commerce & Industry			Total.					
Madras.*	23	6	29	56	9	11	2	1	1	5	..	1	6	6	98	127	(a) Of the members of each council not more than twenty per cent shall be official members and at least 70 p. c. shall be elected members. The Governor may nominate experts with special knowledge and experience of the subject matter of a Bill—one person for Assam and two for other provinces.					
Bombay.*	20	5	25	35	11	22	5	2	...	...	...	1	3	7	86	111			
Bengal	20	6	26	35	11	33	6	5	2	..	.	1d	5	15	113	139						
U. P.	18	5	23	52	8	25	4	1	..	...	...	1	6	3	100	123			
Punjab.	16	6	22	13	7	27	5	..	...	...	12	1	4	2	71	93			
B. & O.	20	7	27	42	6	15	3	1	.	...	...	1	5	3	76	103			
C. P	10	6	16	31	9	6	1	1f	3	3	54	70e	(d) An additional elected seat will be given to the Dacca University with an increase in the total number.					
Assam.	9	5	14	20	18	12	...	...	...	..	...	...	...	6	39	53
Burma.*	14	10	24	31	44	3	1	79	103	(e) Includes the figures for Berar—the members are nominated as the result of elections.					
Total.	150	56	206	315	116	151	26	13	4	5	12	7	32	45	716h	922	(f) This seat is to be filled up by nomination pending the Constitution of the Nagpur University					

* Seats Reserved—Bombay—7½ (Maharattas).

Madras—28 (Non-Brahmins).

Burma—{ 7 (Indians).
5 (Karens).

(a) Of the members of each council not more than twenty per cent shall be official members and at least 70 p. c. shall be elected members. The Governor may nominate experts with special knowledge and experience of the subject matter of a Bill—one person for Assam and two for other provinces.

(b) It gives the maximum number of officials that may be nominated under the Rules. The Governor may nominate fewer officials and increase the number of nominated non-officials, if he wishes.

(c) It gives the maximum number of nominated members.

(d) An additional elected seat will be given to the Dacca University with an increase in the total number.

(e) Includes the figures for Berar—the members are nominated as the result of elections.

(f) This seat is to be filled up by nomination pending the Constitution of the Nagpur University.

(g) This is a "general" constituency and includes Muhamadans and others (Shillong).

(h) On the average one elected member for 3 lakhs of population.